

SB

48

SB #5 HERK 7A-80
48 An act establishing a
trust

By: Bradley

Introduced 1-16-79

Logged 1-16-79

Referrals Finance
Comm. meeting 2-21-79
Comm. action held

notified

herein F/N herein
memo from Gary Jenkins

Notified
Letter Mr. Xerox 6-17-80
Gary Jenkins (Dept of Fed. Audit Dir.)
Sen Bradley

2/20/79

01 0238 15.29 JA01 0018 15.30 93/21/79

TO: SENATE HESS COMMITTEE (HACKNEY, FERGUSON, COLLETTA, FAHRENKAMP,
STURGULENSKI)

FROM: ANN HELEN WEBB (PSYCHOLOGIST EMPLOYED IN FAIRBANKS)
117-2 BRIGHAM WAY, FAIRBANKS, AK 99701
479-5798 (HOME) 452-1575 (WORK)

RE: SB 48

MESSAGE: I STRONGLY SUPPORT THIS BILL. I HAVE A ELEMENTARY SCHOOL AGE
DAUGHTER AND WOULD PREFER TO CHOOSE HER SCHOOL WITH THE KNOWLEDGE
THAT MY CHOICE IS NOT A FINANCIAL BURDEN. I AM WILLING TO PAY
LOCAL TAXES TO SUPPORT LOCAL SCHOOLS AND WOULD PREFER TO ENROLL
MY DAUGHTER IN PRIVATE SCHOOL WITH A TAX BREAK FOR MYSELF.

FBKS LIO/AW?EOM

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH 5 - JUNEAU 99811

JAY S. HAMMOND, GOVERNOR

February 5, 1979

The Honorable Glenn Hackney
Chairman
Senate Health, Education & Social
Services Committee
Alaska State Legislature
Juneau, Alaska

Re: Senate Bill No. 48

Dear Senator Hackney:

Senate Bill No. 48, an Act establishing a tuition credit under the Alaska net income tax, was introduced in the Senate on January 16, 1979 and was referred to the Senate Health, Education & Social Services and Finance Committees.

For the consideration of the Senate Health, Education & Social Services Committee, I am enclosing a copy of a Fiscal Note prepared by Mr. Gary Jenkins, Director, Audit Division, Department of Revenue concerning the proposed legislation.

Sincerely,



R. D. Stevenson
Special Assistant

cc: The Honorable John C. Sackett
Chairman
Senate Finance Committee

John Messenger
Deputy Commissioner
Department of Revenue

Gary Jenkins, Director
Audit Division
Department of Revenue

STATE
of ALASKA


MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: February 1, 1979

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins 
Director
Audit Division

SUBJECT: Senate Bill No. 48

It is extremely difficult to estimate the actual dollar effect of the tuition credit proposed by SB 48 because of the almost total lack of information available regarding the number of students attending vocational schools and schools of higher education. In discussions with various personnel in the Department of Education, I was advised that last year's enrollment in private elementary and secondary schools in the state was 3,130 and that there is a possible 800 to 900 in other private schools on which they did not have information. The staff working with the higher education loan funds advised me there were approximately 3,000 students going to school on loans and they estimated that number could be as high as 50 percent of the total number of students going to schools of higher education. Last, I have assumed there are at least 1,000 students going to approved vocational schools.

Assuming there are 4,000 students in private elementary, and secondary schools, 1,000 in vocational schools, and 6,000 in schools of higher education, the total potential cost of this tuition credit would be \$5,500,000.

One serious problem I see with the bill is in the definition of "eligible educational institution". This definition states that it is a school which "meets accreditation or approval criteria established by the department by regulation". To allow us to effectively administer this law, if enacted, it is recommended that the requisite accreditation or approval criteria be specifically defined in the Statute or that they be established by the Department of Education rather than Revenue.

*Dept. by regulation/accreditation
could screen out every private
school they wished.*

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 48
 Title An Act establishing a tuition credit under the AK net income tax
 Requested by Health, Education & Social Services and Date February 1, 1979
Finance Committees

II. FISCAL DETAIL

Agency Affected Revenue
 Program Category Affected Fiscal Services
 BRU, Program, or Subprogram(s) Affected Audit Division
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars) None

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						

TOTAL

FUNDING (Thousands of Dollars) None

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See attached memo to R. D. Stevenson dated 2/1/79.

IV. DATE February 1, 1979 PREPARED BY *Sam Lank*
 AGENCY Department of Revenue, Audit Division
 PHONE 475-2320
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

Petersburg Public Schools

D. W. Schultz, Superintendent

P. O. BOX 289

PETERSBURG, ALASKA 99833

March 14, 1979

Senator Hackney, Chairman
Health, Education, and Social
Services Committee
Alaska State Legislature
Juneau, Alaska

Dear Senator Hackney:

The Petersburg School Board strongly opposes SB 48 and the \$500.00 tax break for people enrolling their children in private and religious schools. We feel that this bill would erode financial support for the public schools and reduce the effectiveness of the programs now offered to the children of Alaska.

Thank you for your attention on this matter.

Sincerely,



Mike Dean, Pres.

cc: kep. Ernie Haugen

An Equal Opportunity Employer

ACCREDITED BY NORTHWEST ASSOCIATION OF SECONDARY AND HIGHER SCHOOLS

MEMBER: ALASKA SCHOOL BOARD ASSOCIATION

KODIAK ISLAND BOROUGH SCHOOL DISTRICT

P.O. BOX 886
KODIAK, ALASKA 99615
TELEPHONE: (907) 486-3131

March 16, 1979

File

The Honorable Glen Hackney
Senate Finance Committee
Alaska State Senate
Pouch V State Capitol Bldg.
Juneau, Alaska 99811

Re: SB48 Educational Tuition Credit

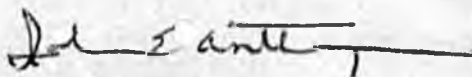
Dear Senator Hackney:

I oppose SB48 for both financial and philosophical reasons:

- (1) According to the information I have received, the fiscal impact of these tax credits would be \$5,000,000 in State revenue in a year when we can least afford it; and
- (2) This would support a dual-system of schools in the State. We are assuming our obligations to provide an education to all Alaskan students through one system, the public schools, and I do not feel that it would be appropriate for the State to support two systems.

Within the one State-supported school system we can and do provide a number of alternatives for students, and I feel we should continue these efforts and to rely on the local school boards to reflect community needs in their decision-making.

Sincerely,



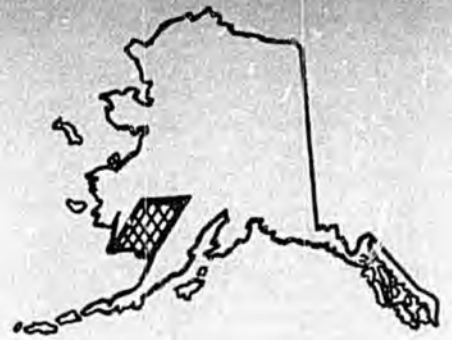
John E. Anttonen
Superintendent

/mke



Southwest Region Schools

P.O. Box 196
Dillingham, Alaska 99576
Phone (907) 842-5288



March 9, 1979

The Honorable Glenn Hackney, Chairman
Health, Education and Social Services Committee
Alaska Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Hackney:

I am writing to express concern regarding Senate Bill 48, which would provide tuition tax credits. The loss of revenue to the State resulting from passage of SB 48 would be substantial and would come at a time when revenue is in short supply. However, the most serious objection to the bill is that it would violate the basic constitutional principle of separation of church and state by indirectly supporting religious education.

Your efforts to insure the defeat of SB 48 will be appreciated.

Sincerely,

Robert Van Slyke

Robert Van Slyke, Ed.D.
Superintendent

RVS:bd





WRANGELL

PUBLIC SCHOOLS

P. O. BOX 651

WRANGELL, ALASKA 99929

Telephone (907) 874-3395

GATEWAY TO THE STIKINE

ROBERT McCONNELL, Superintendent of Schools

March 12, 1979

The Honorable Glenn Hackney, Chairman
Health, Education, & Social Services
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Hackney:

I would like to voice my protest against Senate Bill 48 on tuition credit as written.

Other than a loss in state revenue is in the offering. As written the bill also allows state funds to be expended to parents who send their children to private and religious schools. It seems to be that, other than maybe being illegal, this would also reduce the probable income to state financial educational institutions. I would very much like to see a tuition credit for income tax since I have children in college. However, I would not like to have it if it also means the state is trying to help support private schools, which should be the sole responsibility of the people who wish their services. Anything that distracts from public education is concern of mine.

Sincerely,

Robert W. McConnell
Superintendent

RWM:sk



Delta/Greeley School District REAA #15

Glen Chowning, Superintendent
P.O. Box 527
Delta Junction, Alaska 99737

907-895-4658
895-4659

March 8, 1979

The Honorable Glenn Hackney
Alaska State Senate
Pouch V, State Capitol Building
Juneau, AK 99811

Dear Senator:

I am writing in regard to Senate Bill 48 which would provide for a \$500 tuition tax break for people enrolling their children in private and religious schools.

I am concerned about two things: 1) the impact of the bill on State revenue, and 2) the impact of the bill on public school funding.

I strongly oppose the passage of S. B. 48 on the grounds that it would be indirect support of parochial schools by the State, and that it would have a direct impact on the taxpayers, plus the public schools of this State.

I urge you not to pass this legislation.

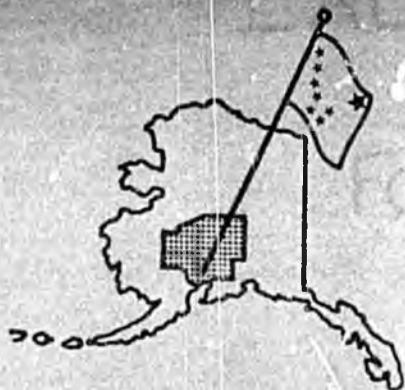
Sincerely,


Glen Chowning
Superintendent

GC:11a

cc: Representative Moss

Robert Greene, Executive Secretary
Association of Alaska School Boards



MATANUSKA-SUSITNA BOROUGH SCHOOL DISTRICT

BOX AB

PALMER, ALASKA 99645

PHONE 745-4822

NORMAN S. ROUSEY
SUPERINTENDENT OF SCHOOLS

March 8, 1979

The Honorable Glen Hackney
Chairman
Senate Health, Education &
Social Services Committee
Pouch V
Juneau, Alaska 99811

Dear Sir:

The Matanuska-Susitna Borough School District strongly opposes SB 46 for an act establishing a tuition credit under the Alaska net income tax.

When tax dollars are at a premium, we cannot support a tax break that would be a loss of some five million dollars in State revenue. This same tax break has been judged unconstitutional in a federal court under New Jersey law.

Sincerely,

MATANUSKA-SUSITNA BOROUGH SCHOOL DISTRICT

A handwritten signature in cursive script that reads "Norman Rousey".

NORMAN S. ROUSEY
Superintendent

NSR:ccs

55% COTTON
EXCELEBASE

ST. MARY'S SCHOOL DISTRICT

P.O. Box 171 • St. Mary's, Alaska 99658

WILLIAM MAILER
Superintendent

Honorable Senator Hackney
Senate, Health, Education and Social Services
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Hackney:

With this letter I would like to express my strongest opposition to the passage of SB 48 which would provide a tuition tax break for people enrolling their children in private or religious schools in Alaska.

The projected \$5 million loss of State revenue comes at a very poor time for Alaska education. I encourage you to work to defeat this bill.

Thank you for your time and consideration of this request.

Sincerely,



William Mailer

WM:deb

Erased Board

2% COTTON FIBER

Alaska Pacific University

Anchorage, Alaska 99504

907-276-8181

A STATEMENT TO THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE

As a representative of Alaska Pacific University, I would like to voice our support for Senate Bill 48 and Senate Joint Resolution 14, currently under consideration by the Senate Health and Social Services Committee.

The escalating costs of education, both public and private, have had a profound effect on the numbers of students in Alaska who are going on to a post-secondary education after graduation from high school. Although there is an apparent surplus of college-trained professionals in some areas, there continue to be serious shortages in others. Alaskan colleges and universities are faced with the responsibility of--in fact are charged by the public with--the development of accessible professional programs, the staffing and administration of those programs, and with informing the public of the availability of those programs in an efficient and economical manner. Increasing costs are adversely restricting these responsibilities. Ultimately the burden for maintaining well-educated leadership in Alaska rests with the taxpayer, with respect to public institutions, and the individual student or the parents of students enrolling in private institutions. Often that burden is too great. The alternative is increased reliance upon state or federal financial assistance programs. Invariably, these include educational loans, the availability of which is becoming more and more limited. Most of us are aware of the tremendous default rates for government loans; these defaulted loans not only escalate the costs of program administration, they also encumber the graduating student with considerable liabilities at the beginning of a career, liabilities in the form of debts that are more often than not uncollectable.

A reasonable tuition credit against taxes is an alternative that encourages participation in higher education and provides relief directly to those who need

it most--the career-bound students or students who seek a change in careers.

For these reasons, Alaska Pacific University supports Senate Bill 48 and Senate Joint Resolution 14, and we encourage their passage.

Thank you.

James E. Stevens
Assistant Dean



GRACE BAPTIST ACADEMY

(A Ministry of Grace Baptist Church)

1801 E. 68th Avenue
Anchorage, Alaska 99507

Alaska State Legislature
Teleconference hearings
Legislative Information Office
1024 West Sixth Avenue
Anchorage, Alaska
February 28, 1979

With respect to SJR No. 14, I want to commend Senator Bradley for his keen understanding of the attempt of the IRS to force the closing of many of the Christian schools that have come into existence in the last two decades. His insight into the value of a "free marketplace of ideas" in order to keep our nation great clearly indicates that he is a man who has valuable ideas to promote in State and National governmental circles in behalf of the people he represents.

If the clear violation of the First Amendment as proposed by the IRS were to go unchallenged by our elected officials, we would lose hope of our survival as a church because both compliance or noncompliance with that proposal would dictate the demise of our Christian schools. We are praying for the passage of SJR14.

On the subject of Senate Bill No. 48 Senator Bradley's intent is welcomed with great enthusiasm by citizens who, whether by religious conviction or because they seek an educational and disciplinary philosophy differing from that offered by most public schools, have been paying double for the education of their children. Such discrimination against certain taxpayers is borne by them to demonstrate their sincere concern for the education and welfare of their children.

Relief from the double cost burden, or even a 50% credit as proposed strikes me as a right approach to the present inequity. But I see in SB48 that the "eligible educational institutions" are required to "meet accreditation or approval criteria established by the department by regulation."

Inasmuch as past attempts by the department to regulate private schools have included such regulations as would abridge our rights and could conceivably force us to compromise our religious convictions, I would respectfully ask that part (d) of SB48 and any reference to "eligible educational institutions" be excluded from the bill. This becomes a necessity to us because of the First Amendment Rights, and would be in accord with the thinking of Senator Bradley as expressed in SJR #14.

*Rev. Ludwig Zerbe, Pastor
Grace Baptist Church*

Name William H. Hovey
Representing Anchor Christian School
Address 6401 Northern Lights
Phone _____

Here to TESTIFY

Here to OBSERVE _____

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

William H. Hovey
(signature)

Have you participated in other legislative teleconferences? No How many? _____ Would you have participated in this hearing if the network were not available? No

PLEASE PRINT

Name Jerry O'Brien
Representing Anchorage Christian School
Address 6501 Dibarr
Phone 338-4025

Here to TESTIFY

Here to OBSERVE _____

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Jerry O'Brien
(signature)

PLEASE PRINT

Name Burton Carney
Representing Harvester Christian Church
Address 9101 Brayton Drive, 99507
Phone 344-0528

Here to TESTIFY

Here to OBSERVE _____

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Burton Carney
(signature)

Have you participated in other legislative teleconferences? No How many? _____

Would you have participated in this hearing if the network were not available? No

Name Ray Frank Here to TESTIFY YES
Representing The Citizens Leg Comm (state)
Address SRB - 516 PALMERAK Here to OBSERVE _____
Phone 745-4128

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Ray Frank
(signature)

Have you participated in other legislative teleconferences? no How many? _____ Would you have participated in this hearing if the network were not available? no

PLEASE PRINT

Name GLENN W. CLARY Here to TESTIFY T
Representing SELF
Address 5700 College DR. Here to OBSERVE _____
Phone 3376708

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Glenn W. Clary
(signature)

PLEASE PRINT

Name Bill Leight Here to TESTIFY T
Representing SELF
Address 3011 Kerry Cir Here to OBSERVE _____
Phone 337 2495

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

William W. Leight
(signature)

Have you participated in other legislative teleconferences? no How many? _____ Would you have participated in this hearing if the network were not available? no

PLEASE PRINT

(T)

Name Betty Burrows
Representing myself - parent
Address 2801 Melvin
Phone 243-3539

Here to TESTIFY
Here to OBSERVE

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Betty Burrows
(signature)

PLEASE PRINT

(T)

Name Margaret Green
Representing Tom Thumh Moulson
Address 2605 7th St
Phone 272 5033

Here to TESTIFY
Here to OBSERVE

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Margaret Green
(signature)

Have you participated in other legislative teleconferences? Yes How many? 1 Would you have participated in this hearing if the network were not available? Yes

PLEASE PRINT

(T)

Name Albert R. Keyes
Representing Self
Address PO Box 10-1212
Phone 344-5397

Here to TESTIFY
Here to OBSERVE

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Albert R. Keyes
(signature)

Have you participated in other legislative teleconferences? No How many? 0 Would you have participated in this hearing if the network were not available? Yes

How did you learn about this hearing? TV If you did you use the network: Yes

Name Jessie Taylor Catherine Payne

Here to TESTIFY

Representing S. T. D. Club of Anch.

Address 1211 S. Brainerd

Here to OBSERVE

Phone 333-2822

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

(signature)

PLEASE PRINT

T

Name Jack Bacher

Here to TESTIFY

Representing Anchorage Christian Academy

Address 7445 Muldrow Dr

Here to OBSERVE

Phone 333-1414

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Jack Bacher
(signature)

PLEASE PRINT

T

Name Fred B. Morgan

Here to TESTIFY

Representing Self

Address Box 2329; Anch., AK. -99510

Here to OBSERVE

Phone 277-8522

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Fred B. Morgan
(signature)

Have you participated in other legislative teleconferences? Yes How many? 2

Would you have participated in this hearing if the network were not available? No

Name PATRICIA A STEINMETZ
Representing MY SELF
Address 325-D GULKANA ST
Phone 862-5268

Here to TESTIFY ✓

Here to OBSERVE _____

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Patricia A Steinmetz
(signature)

Have you participated in other legislative teleconferences? NO How many? _____

Would you have participated in this hearing if the network were not available? NO

PLEASE PRINT

Name Joseph O. Steinmetz
Representing MYSELF
Address 325 D GULKANA ST
Phone 862-5268

Here to TESTIFY (T) ✓

Here to OBSERVE _____

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Joseph O. Steinmetz
(signature)

Have you participated in other legislative teleconferences? NO How many? _____

Would you have participated in this hearing if the network were not available? NO

PLEASE PRINT

Name RICHARD C SOVERNS
Representing SELF
Address SRA Box 1507B Anch AK 99507
Phone 349-4165

Here to TESTIFY (T) ✓

Here to OBSERVE _____

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Richard C Sovrens
(signature)

Have you participated in other legislative

Would you have participated in this hearing

Name JAMES E. STEVENS Here to TESTIFY
Representing ALASKA PACIFIC UNIVERSITY
Address ANCHORAGE, AK. 99504 Here to OBSERVE
Phone 276-8181

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

James Stevens
(signature)

Have you participated in other legislative teleconferences? NO How many? Would you have participated in this hearing if the network were not available? YES

PLEASE PRINT

Name Ed Rinne Here to TESTIFY T
Representing My Self
Address 8310 Wellsey Ct Here to OBSERVE
Phone 344-4131

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Edwin J. Rinne
(signature)

Have you participated in other legislative teleconferences? no How many? Would you have participated in this hearing if the network were not available? NO

PLEASE PRINT

Name Rev. Ludwig Zierke Here to TESTIFY T
Representing Grace Baptist Church
Address 1801 E. 68th Ave. Here to OBSERVE
Phone 349-5426

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

(signature)

Have you participated in other legislative teleconferences? _____ Would you have participated in this hearing if the network were not available? _____

Name DENISE KNAPP
Representing DELTA DENTAL PLAN OF ALASKA
Address 1400 W. 31ST AVE.
Phone 278-3624

Here to TESTIFY
Here to OBSERVE

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

D. Knapp
(signature)

Have you participated in other legislative teleconferences? no How many?

Would you have participated in this hearing if the network were not available? yes

How did you learn about this hearing?

If yes, did you use the network:
 instead of travel
 instead of phone conversations

From notice mailed to Alaska

PLEASE PRINT

Name ALLEN BRAUN
Representing PRIVATE SCUBA DIVER
Address P.O. Box 10 - 725
Phone 344-7388

(T)
Here to TESTIFY
Here to OBSERVE

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Allen Braun
(signature)

PLEASE PRINT

Name Mrs Evelyn M. Hadfield
Representing
Address 9050 Lake Axis #2
Phone 276-3656

(T)
Here to TESTIFY
Here to OBSERVE

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Mrs Evelyn M. Hadfield
(signature)

Have you participated in other legislative teleconferences? How many?

Would you have participated in this hearing if the network were not available?

Name David Link
Representing MYSELF
Address 955 E 79
Phone 344-2013

Had to lead
Here to TESTIFY X

Here to OBSERVE _____

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

David Link
(signature)

Have you participated in other legislative teleconferences? <u>X</u> How many? <u>1</u>	Would you have participated in this hearing if the network were not available? _____
How did you learn about this hearing? <u>TV</u>	If yes, did you use the network: instead of travel _____

PLEASE PRINT

Name Denny BALASCIO
Representing _____
Address S.E.A Box 1631-C 99507
Phone 399-7487

left
Here to TESTIFY _____

Here to OBSERVE X

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

D.M. Balascio
(signature)

PLEASE PRINT

Name Rod Thompson
Representing self
Address P.O. Box 2333
Phone 344-1026

left
Here to TESTIFY X

Here to OBSERVE _____

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Rodney A. Thompson
(signature)

Have you participated in other legislative teleconferences? <u>N/D</u> How many? _____	Would you have participated in this hearing if the network were not available? _____
--	--

Name James A. Auerbach
Representing Alaska Deformers Educators
Address 3151 31st Ave
Phone 275-8179

Here to TESTIFY _____
Here to OBSERVE

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

James A. Auerbach
(signature)

PLEASE PRINT

Name NANCY N. MARKLEY
Representing SENATOR MIKE GRAVEL
Address P.O. BOX 2283, ANCHORAGE 99510
Phone 277-4591

Here to TESTIFY _____
Here to OBSERVE

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Nancy N. Markley
(signature)

Have you participated in other legislative teleconferences? NO How many? —

Would you have participated in this hearing if the network were not available? _____

PLEASE PRINT

Name Rob Mourant
Representing Alaska Student Lobby
Address 631 E 22nd Apt B11 99503
Phone 276-7312

Test to observe
Here to TESTIFY

Here to OBSERVE _____

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Rob Mourant
(signature)

Have you participated in other legislative teleconferences? NO How many? _____

Would you have participated in this hearing if the network were not available? _____

Name Alan Daniels
Representing Anchorage Christian School
Address 6431 E. Northern Lights Blvd.
Phone _____

Here to TESTIFY _____
Here to OBSERVE

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Alan R. Daniels
(signature)

Have you participated in other legislative teleconferences? no How many? _____ Would you have participated in this hearing if the network were not available? _____

P L E A S E P R I N T

Name Rene Hunter
Representing Anchorage Christian Schools
Address 6401 E. Northern Lights
Phone _____

Here to TESTIFY _____
Here to OBSERVE

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Rene S. Hunter
(signature)

Have you participated in other legislative teleconferences? _____ How many? _____ Would you have participated in this hearing if the network were not available? _____

P L E A S E P R I N T

Name Jim Julien
Representing Anchorage Christian Schools
Address 6401 E. Northern Lights
Phone _____

Here to TESTIFY _____
Here to OBSERVE

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Jim Julien
(signature)

Have you participated in other legislative teleconferences? _____ How many? _____ Would you have participated in this hearing if the network were not available? _____

Name Don Hall Here to TESTIFY _____
Representing Anchorage Christian Schools
Address SRH Bldg 47A Anch. AK 99502 Here to OBSERVE
Phone 344-0477

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Don Hall
(signature)

PLEASE PRINT

Name Abcra Christie Here to TESTIFY _____
Representing Anchorage Christian Schools
Address 10401 Northern Blvd. Here to OBSERVE
Phone 337-9575

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

(signature)

Have you participated in other legislative teleconferences? _____ How many? _____ Would you have participated in this hearing if the network were not available? _____

How did you learn about this hearing? _____ If yes, did you use the network? _____

PLEASE PRINT

Name KEVIN MAGUIRE Here to TESTIFY _____
Representing ANCHORAGE CHRISTIAN SCHOOLS (A.C.S.)
Address 6401 E. NORTHERN LIGHTS Here to OBSERVE
Phone _____

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Kevin Maguire
(signature)

Have you participated in other legislative teleconferences? _____ Would you have participated in this hearing if the network were not available? _____

PLEASE PRINT

Name DOROTHY LEE
Representing THE SALVATION ARMY
Address 135 E. 2TH
Phone 277-2591

Here to TESTIFY _____

Here to OBSERVE X

~~TO WRITE~~

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Dorothy Lee
(signature)

Have you participated in other legislative teleconferences? No How many? _____

Would you have participated in this hearing if the network were not available? ?

How did you learn about this hearing?

If yes, did you use the network:

Mailed notice

- _____ instead of travel
- _____ instead of phone conversations
- _____ instead of mailed testimony

Date: 2/28/79

Subject: SB 48, SB 214, SJR 14

Location: Anchorage

The following teachers and students from the Anchorage Christian School were prepared to testify on SB 48 and SJR 14 during the teleconference 2/28/79, but because of the large number of witnesses scheduled agreed to have four spokesmen express their views. (The spokesmen were Mr. O'Brien, Mr. Hovey, Mr. Moreland and Miss Hanson).

Ronald Kine
Terry Roache
Harold Lewis
Tim Bishop
Alecia Christie
Kelly Mason
Theresa Pierce
Steven van Dusen
Ellis Blacksheer
Rogert Bogner
Jimmy Julien
Delores March
Debbie Summers
Linell Wood
Lori Gam
Lori Schultz
Allen Daniels
Vicky Bailey
Paul Green
Nanette Hunt
Katie Julien
Monte Moreau
Shawn Brownell
Randy Lewis
Theresa Cordesi
Kevin McGuire
Nancy Carter
Jimmy Carter
Tony Orr
Melanie Smith
Beth Vickrey
Pam Bond
Donna Charles
Terry Tickerson
Lori Hall
Renee Heyter
Danhy Church
Jeanie Day
Scott Willis
Philip Ullrich
Taylor Pinkney
Tammy McIntyre
McCollough
David Hovey

ALASKA'S LARGEST SUNDAY SCHOOL



Anchorage Baptist Temple

6401 East Northern Lights
Anchorage, Alaska 99504
(907)333-6535

JERRY PREVO
PASTOR

ASSISTANT PASTORS

BILL LEIGHT
W. CARLIN DEMPSEY
DEL BROCK
JOHN EMERY
MARK MULLINS

SECRETARY

GRACE MITCHELL

March 1, 1979

The Honorable Glenn Hackney
Senator from Alaska
Pouch V
Juneau, Alaska 99811

Dear Sir:

I am very much interested in SB 48 regarding educational tuition credit. I believe it is a fair bill, and one that is overdue. Some fear that it will hurt the public school system, but I believe to the contrary, that it will strengthen the public schools. It will finally convince the public school administrators and people that they must do something to improve the educational programs for our children today.

I believe part D under section 1 should be amended to read that an "eligible educational institution is one which meets accreditation or approval by criteria established by the Alaska State Legislature." This could be done by adding the words at the end "or Section 4 of AS 14.40.010 (b)1." This is the Alaska Compulsory Education Statute that states that a child must attend a public school or one of the three other kinds of schools. Since those schools have been approved by the Legislature, they should automatically be approved as eligible educational institutions. We believe this needs to be spelled out clearly by the Legislature in order to prevent the Department of Education from coming up with regulations beyond those which the Legislature has already prescribed.

Of course, this will not give any relief to parents who send their children to a church-sponsored school unless House Joint Resolution 11 is passed, which will allow indirect aide to religious sponsored schools.

ALASKA'S LARGEST SUNDAY SCHOOL



Anchorage Baptist Temple

6401 East Northern Lights
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JERRY PREVO
PASTOR

ASSISTANT PASTORS

BILL LEIGHT
W. CARLIN DEMPSEY
DEL BROCK
JOHN EMERY
MARK MULLINS

SECRETARY
GRACE MITCHELL

Senator Glenn Hackney

Page 2

Also, we are very much interested in SJR 14, protesting Internal Revenue Service regulations removing tax exempt status of certain private schools. Your support of this resolution will be very much appreciated. Action on this bill is very important, since IRS is steadily moving forward to invoke these unconstitutional regulations.

Thanks in advance for your help.

Sincerely,

Jerry Prevo
Dr. Jerry Prevo

HARVESTER CHRISTIAN ACADEMY

DIVISION OF SOUL HARVEST, INC.

9101 BRAYTON DRIVE
ANCHORAGE, ALASKA 99507
907-344-0528

February 28, 1979

Testimony before the House H.E.S.S. Committee
Legislative Information Office, Anchorage

SJR14

Good afternoon Senator Hackney and Committee members.

I am Burton Carney, Principal of Harvester Christian Academy in Anchorage which is the teaching ministry of Harvester Christian Church, Paul Glover, Pastor. Harvester Christian Academy is an active member of the Alaska Association of Christian Schools and affiliated with the American Association of Christian Schools.

I am strongly in favor of SJR14 and seek to enlist your support for its passage. The bill is well written and directly addresses the problem that church schools face in this state.

The U.S. government, acting through the IRS, presently requires each private religious school to register with the IRS, using their standard form 5578, which provides the IRS with certain information regarding the control of the school, and what exemption covers the school, and requires a statement of non discrimination. The schools are also presently required to include a policy statement of racial nondiscrimination in all of its brochures and catalogues dealing with student admissions, programs and scholarships. It must also presently make known its racially non-discriminatory policy through publication in a newspaper, or communication through use of the broadcast media, of such non-discriminatory policy.

The newly proposed guidelines go even further in extending the control of the IRS over private Christian schools. This includes a determination by the government as to the number of minority students actually enrolled, as well as an inquiry into the various activities of the school, covering such things as student admissions, the hiring of teachers and other staff personnel, the use of the building, which, in many cases is a church facility, and an examination of the curriculum to determine whether there is any special minority oriented curriculum or orientation programs.

With the new guidelines, the government proposes to control the school's ability to admit or deny admittance to any student applying to the school, as well as the school's ability to hire or fire the teachers. As many Christian schools only hire teachers who have the same religious belief, and admit only those students who either belong to the church or are willing to subscribe to the same religious beliefs, this decision to include private schools under the

Prepare and Prevent or Repair and Repent!

proposed guidelines infringes upon the right of our churches and parents to have their children taught by someone who holds the same values as they do, and to have the necessary religious atmosphere, generated by a unanimity of faith among the students. This not only infringes upon the religious liberties of the parents, the students, and the teachers, it does so in a way that is completely contrary to the reasons why exemptions were originally given to churches and church schools.

We object to the new IRS proposal because it puts the financially expensive burden of proof as to whether churches are operated in a nondiscriminatory manner on the churches themselves. It really uses the GUILTY UNTIL PROVEN INNOCENT APPROACH which is contrary to the basic American way for doing things.

For these reasons I ask that you please support SJR14 and pass it quickly so that it may be sent on to Washington.

SB48

I also wish to speak today concerning SB48 Tuition Credits.

I appreciate the fact that SB48 recognizes the fact that parents exercising their freedom of choice by sending their children to private schools bear an undue financial burden. They must not only pay taxes for public education, but also tuition that averages \$1,000 per child in this state. Tax relief is needed.

However, our church, its staff, and the church families are OPPOSED to the passage of SB48 unless an additional phrase is added to line 26 that includes the words, "OR school operated as a ministry of a church."

Without the additional wording being added, the State of Alaska would have to approve my church's educational ministry before our parents could receive the tax benefit. Not only does this violate the Constitutional separation of church and state, but sets a dangerous precedent for state intervention into church programs.

To be state approved implies that our school would have to conform to the same regulations as the public schools in this state. Our church schools purposefully operate in a manner different than the public schools. There is always the chance that an over-zealous official will attempt to interfere with our church school program, as has occurred in some other states, if we were to be state accredited or state approved.

I would seek to remind members of the Committee that SB323 was passed into law last year. Alaskan statutes NOW recognize as private schools not only those that are state accredited or state approved, but ALSO those private schools which have their own teacher training and academic programs as long as they can demonstrate that the children are learning equally well as their public school counterpart.

Since an Alaskan statute NOW recognizes as a school one that is NOT state approved or state accredited, please add wording to SB48 that would likewise recognize this change in our laws.

I do want to say that if this Committee does not add this wording to protect the integrity of our church, we will find it necessary to do everything in our means to oppose its final passage into Alaskan law.

In summary, SB48 attempts to alleviate a definite problem that our parents face, but needs additional wording to PROTECT our church according to the principle of separation of church and state.

Thank you.

A handwritten signature in cursive script that reads "Burton Carney". The signature is written in dark ink and is positioned above the typed name.

Burton Carney

SB 48



ASSOCIATION OF ALASKA SCHOOL BOARDS

SUITE 3, 204 NORTH FRANKLIN STREET • JUNEAU, ALASKA 99801 • PHONE 586-1083

March 1, 1979

The Honorable Glenn Hackney
Alaska State Senate
Juneau, Alaska 99801

Dear Senator Hackney:

Attached is a copy of material from the Michigan Association of School Boards relating to a Federal Appeals Court decision on tuition tax breaks that I talked to you about yesterday.

Respectfully,

Robert C. Greene
Executive Secretary

RCG:bld

Attachment



421 W. Kalamazoo,
Lansing, Michigan 48933 — (517) 371-5700

Mailed on alternating Thursdays
each month to all Board Members
and Superintendents

Board-o-Gram

February 15, 1979

EXECUTIVE ORDER CUTS?

Governor Milliken indicated at a press conference last week that he should know by March 1st, whether executive order reductions in the current year appropriations (1978-79) will be necessary. A statement made to the House Taxation Committee by Dr. Gerald Miller, Director of the Department of Management and Budget, pegged the chances of such a cut at 50-50. The Governor is currently working to reduce expenditures within his state departments in order to achieve sufficient savings to avoid an executive order reduction. If executive order cuts are necessary, school aid appropriations could be included. By our Michigan Constitution of 1963, such executive order reductions must receive the concurrence of the appropriations committees of the House and Senate.

MICHIGAN SCHOOLS HAD RECORD NUMBER OF "SNOW DAYS" LAST YEAR

Michigan schools lost a record 3,858 days of school last year because of inclement weather and other reasons, the State Board of Education reported last week. It represented an increase of 441 days compared to the previous school year (1976-77) when schools reported 3,417 "snow days." State Superintendent of Public Instruction John W. Porter said a late January snow storm that hit Michigan last year was responsible for the record number of "snow days" reported by Michigan schools.

NEW JERSEY TUITION TAX BREAK LOSES AGAIN ON APPEAL

A federal appeals court has affirmed a lower court ruling that a New Jersey law allowing parents a tax break for each child in nonpublic school violates the First Amendment to the U.S. Constitution by advancing religion. Under the law parents were permitted to deduct \$1,000 for each child in nonpublic school when computing gross personal income for state tax purposes. Last February, the U.S. District Court for New Jersey said the law did not pass constitutional muster.

That decision was affirmed Jan. 12 by the U.S. Court of Appeals for the 3rd Circuit. Accepting the trial court's finding that 714 of 753 nonpublic schools in the state are religiously affiliated and that the vast majority of private school children attend such schools, the appeals court concluded that the tax break was a charge made on the state for the purpose of religious education.

MORE ON CREDIT UNIONS AND SAVINGS AND LOANS

In the January 4, 1979 Board-o-Gram, we indicated that Proposal "C" which allows the state to invest in credit unions and loan associations would need implementing legislation to permit such investments by school districts. This information applies to the investment of school district surplus funds and does not apply to depositing funds accumulated under a deferred compensation program when so authorized by an employee of a school district.

COMMITTEE TO HOLD HEARINGS ON SCHOOL AID AND DEPARTMENT OF EDUCATION

Senator Kerry Kammer, Chairman of the Appropriations Subcommittee on State Aid and the Department of Education, has advised us that public hearings will be held throughout the State concerning the Department of Education. The following issues are of particular interest to the committee: (continued on back page)

SYNOPSIS OF IRS DEMANDS

- 1) Grant scholarships and provide other significant financial assistance to minority students.
- 2) Actively and vigorously recruit minorities.
- 3) Increase our percentage of minority students.
- 4) Employ minority teachers or professional staff.
- 5) Provide evidence of "good faith" by the following:
 - a. ...continued and meaningful advertising programs or contact with minority leaders inviting applications from minorities...
 - b. ...significant efforts to recruit minority teachers...
 - c. ...participation with integrated schools in sports and other activities.
 - d. ...making schools facilities available to outside, integrated civic or charitable groups, etc.
 - e. ...special minority-oriented curriculum or orientation...
 - f. ...minority participation in founding the school or using minority board members...

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6442
JUNEAU, ALASKA 99802

02149 NL TDA UNALAKLEET ALASKA 109 02-27 705P AST
PMS SENATOR GLENN HACKNEY CHAIRMAN
HEALTH EDUCATION AND SOCIAL SERVICES COMMITTEE
JUNEAU AK

SB48 HAS JUST COME TO OUR ATTENTION, WE ARE PLEASED TO BE ABLE TO LEND OUR SUPPORT TO THIS PROPOSED LEGISLATION. SINCE 1956 COVENANT HIGH SCHOOL HAS PROVIDED SECONDARY EDUCATION TO WESTERN ALASKANS, FINANCED LARGELY BY DONATIONS. MANY OF OUR GRADUATES, A LARGE MAJORITY OF WHOM ARE NATIVES, ARE IN PLACES OF LEADERSHIP IN ALASKA. INCREASINGLY WE ARE NOW HAVING TO DEPEND ON TUITIONS TO COVER RAPIDLY RISING COSTS. THIS PLACES AN UNFAIR BURDEN ON TAXPAYING PARENTS, WHO FINANCE BOTH PUBLIC AND PRIVATE SCHOOLS SUCH AS CHS. SB48 WOULD PROVIDE MUCH NEEDED RELIEF TO SOME OF THESE PARENTS AND WOULD BE A WELCOME ASSIST TO CHS AND SIMILAR SCHOOLS WHICH ARE MAKING A VALUABLE CONTRIBUTION TO THE STATE, BUT ARE NOW FIGHTING FOR THEIR FINANCIAL SURVIVAL. WE AS A STAFF AND STUDENT BODY, THEREFORE, STRONGLY URGE PASSAGE OF THIS LEGISLATION.

ALFRED S. WHITE, PRINCIPAL, COVENANT HIGH SCHOOL

TELEGRAM

HCA ALASKA COMMUNICATIONS, INC.
PHONE 855-5412
JUNEAU, ALASKA 99801

02097 POM ANCHORAGE ALASKA 15 02-27 625P AST

PMS SEN GLENN HACKNEY

JUN

WE SUPPORT SB48. PLEASE SUPPORT IT, TOO.

RON AND SYLVIA MCINTOSH 6204 EASTWOOD COURT ANCHORAGE 99504

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6442

JUNEAU, ALASKA 99802

02153 NL ANCHORAGE ALASKA 50 02-27 800P AST

PMS SEN GLENN HACKNEY

JUN

PLEASE PASS SB48. WE HAVE FOUND THE PUBLIC EDUCATION LESS THAN
DESIRABLE, BUT DO NOT OBJECT TO SUPPORTING IT. HOWEVER, FOR THOSE
OF US WHO CHOOSE PRIVATE EDUCATION WE FEEL THERE SHOULD BE SOME
TAX RELIEF.

THE BLACKMAN FAMILY

TELEGRAM

PTA ALASKA COMMUNICATIONS, INC.

P. ONE 886-5442

ANCHORAGE ALASKA 99502

02089 NL ANCHORAGE ALASKA 50 02-27 340P AST

PMS SENATOR GLENN HACKNEY

JUN

PLEASE SUPPORT SB48. DLRS500 TUITION CREDIT IS NEEDED NOW

DR AND MRS WILLIAM H BOWERS 6215 EASTWARD CT

ANCHORAGE AK

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 26-444

JUNEAU, ALASKA 99802

02088 POM ANCHORAGE ALASKA 15 02-27 405P AST

PMS SEN GLEN HACKNEY

JUN

DO PASS SENATE BILL 48. HELP FIGHT INFLATION.

MR AND MRS MICHAEL BARNE

6430 MINK AVE

ANCHORAGE AK 99504

02285 PGM ANCHORAGE ALASKA 02-27 411P AST

PMS SEN GLEN HACKNEY

JUN

PLEASE PASS SB48. THIS WILL MEAN A GREAT DEAL TO MANY HARD
WORKING PARENTS.

JOHN RUGGLES 7011 EAST 10TH ANCHORAGE AK 99504

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 551-5442
JUNEAU, ALASKA 99802

02096 POM ANCHORAGE ALASKA 15 02-27 622P AST

PMS SEN GLENN HACKNEY

JUN

PASS SB48 DLRS500 TUITION CREDIT

RONALD H KENNEDY PO BOX 662 ANCHORAGE ALASKA 99510

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6442
JUNEAU, ALASKA 99802

02154 NL TDA EAGLE RIVER ALASKA 50 02-27 754P AST

PMS SEN GLENN HACKNEY

JUN

REFERENCE SB48. WE ARE IN FAVOR OF SB48 AND ITS DLRS500 PER
CHILD EXEMPTION FOR PRIVATE SCHOOL. REQUEST YOU VOTE IN FAVOR
OF THIS BILL.

VAL AND DENNIS BRITTON SR BOX 5417 EAGLE RIVER AK 99577

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-8442
TUNEAU, ALASKA 99802

1979 FEB 28 AM 2 05

02155 NL ANCHORAGE ALASKA 50 02-27 1010P AST

PMS SEN GLENN HACKNEY

JUN

PLEASE BE ADVISE THAT WE ARE IN FAVOR OF SB48.

CARDINAL SCHOOL OF TRAVEL, R DROEGE

2437 INGRA ANCHORAGE AK 99504

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6442

KENNAU, ALASKA 99802

1979 FEB 27 PM 12 08

52611 POM TDA EAGLE RIVER ALASKA 15 02-27 945A AST

PMS SENATLE GLENN HACKNEY

JUN 1121

PLEASE PASS SB48. WE NEED DLRS500 TUITION TAX CREDIT TO

FIGHT INFLATION

SANDRA GLASPELL 610 MEADOWCREEK EAGLE RIVER AK

TELEGRAM

WGA ALASKA COMMUNICATIONS, INC.

PHONE 584-6442

JUNEAU, ALASKA 99802

02012 PCM ANCHORAGE ALASKA 15 02-27 938A AST

1979 FEB 27 PM 12 11

PMS SENATOR GLENN HACKNEY

JUNEAU AK 1122

PLEASE PASS SB48. WE NEED DLRS500 TUITION TAX CREDIT TO FIGHT
INFLATION.

ROBERT E MALIN MD 7420 TUTNA CIRCLE ANCHORAGE AK 99504

TELEGRAM

1979 FEB 27 PM 12 11

NCA ALASKA COMMUNICATIONS, INC

PHONE 386-6442

JUNEAU, ALASKA 99802

02013 POM ANCHORAGE ALASKA 15 02-27 940A AST

PMS SENATOR GLENN HACKNEY

JUNEAU AK
1123

PLEASE PASS SD48. WE NEED DLRS500 TUITION TAX

CREDIT TO FIGHT INFLATION.

HEDY F MALIN 7420 TUTNA CIRCLE ANCHORAGE AK 99504

TELEGRAM

HOA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6442

DUNBAR, ALASKA 99502

02131 NL ANCHORAGE ALASKA 50 02-26 548P AST

PMS SEN GLEN HACKNEY

JUN

WHEN ALASKA PROVIDES GOOD EDUCATIONAL INSTITUTIONS FOR OUR CHILDREN, WE WILL SEND OUR CHILD TO PUBLIC SCHOOL. UNTIL THEN HE WILL STAY IN A PRIVATE INSTITUTION. ALASKAN SCHOOLS ARE THE PITS FOR AN EDUCATIONAL WASTELAND. PASS FB48 IF YOU CARE ABOUT OUR CHILDREN AND ALASKAS FUTURE.

RAYMOND WIBERG 604 EAST 78TH AVENUE

ANCHORAGE ALASKA 99502

TELEGRAM

RCR ALASKA COMMUNICATIONS, INC.
PHONE: 586-6442
JURISDI, ALASKA 99802

1979 FEB 26 PM 1 32

02042 POM ANCHORAGE ALASKA 15 02-26 50A AST

PMS SENATOR GLENN HACKNEY

JUN 1972

DO PASS SB48 DLR500 TUITION CREDIT NEEDED TO HELP

FIGHT FAMILY INFLATION

BURDUS FAMILY 2601 MELVIN ANCHORAGE AK 99503

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6442

JUNEAU, ALASKA 99802

#

02010 POM TDA EAGLE RIVER ALASKA 15 02-27 945A AST

PMS SENATOR GLENN HACKNEY

JUNEAU 1124

PLEASE PASS SB48. WE NEED DLRS500 TUITION TAX CREDIT TO
FIGHT INFLATION.

JAMES GLASPELL 610 MEADOWCREEK EAGLE RIVER AK

TELEGRAM

HCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6442

JUNEAU, ALASKA 99802

1979 FEB 27 PM 1 41

02016 POM ANCHORAGE ALASKA 02-27 1042A AST

PMS SENATOR GLEN HACKNEY

JUNEAU AK

1126

PASS SB48. NEED TUITION CREDIT NOW.

JOHN AUFRECHT MA AUDIOLOGIST 2137 EAST 37TH AVE

ANCHORAGE ALASKA 99504

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6442
JUNEAU, ALASKA 99802

1979 FEB 27 PM 2 08

02027 NL ANCHORAGE ALASKA 50 02-27 1135A AST

PMS SENATOR GLEN HACKNEY

JUNEAU

1127

PLEASE PASS SB48. THE TAX CREDIT WOULD HELP TO KEEP MY DAUGHTER
IN A SCHOOL WHICH HAS ALLOWED HER TO DEVELOP AT HER OWN SPEED.
WHICH FAR EXCEEDS CHILDREN HER OWN AGE IN PUBLIC SCHOOLS AND
STILL REMAIN WITH CHILDREN OF HER OWN AGE

TERRY BEDARD

Please file with SB 48

(B)

Telecopy
Feb. 28

Questions: What do you think the retroactive provision will do to the 80 budget and where do you think the Legis should cut to make up for the revenue loss

→ Karen Lindgren
Li-123-26

Renton Carney - Harvester division, 23-26
has a record system
"operated as a school for 10 years"

Geray's division

Low honey

More thing

Charles Harrison

Geray's division
"see church department"

— 770

Will Light

Low honey

More thing

Charles Harrison

Margaret Green - Montessori
Would not oppose addition of Church!

Betty Burroughs - also Montessori

Fred Morgan

Jack Baker -

Mary ...
Cited ... church related

Richard ...

John ...

John ...

John ...

John ...

John ...

Marshall Lind
Speaking for State Bd. - opposed to bill
3200 in private + demonstration
2200/900 ^{dem} secondary

Point out that under wording of bill Dept. would
have to get into it direct.

Jenkins

Spind 14 of the age - 200 students of school
Dept. of Education
Top 1000

They practice
well provide part from other states in
connection with the bill

- Rainey -

- 140 -

Official Copy

Introduced: 1/16/79
Referred: Health, Education &
Social Services and Finance

1 IN THE SENATE

BY BRADLEY

2 SENATE BILL NO. 48

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a tuition credit under the Alaska
7 net income tax; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 43.20 is amended by adding a new section to read:

10 Sec. 43.20.037. EDUCATIONAL TUITION CREDIT. (a) An individual is
11 allowed as a credit against the tax due under this chapter 50 per cent
12 of the money paid by him during the year to eligible educational insti-
13 tutions as tuition for the individual, the individual's spouse, or of
14 any dependents the individual is entitled to claim as personal exemp-
15 tions under Internal Revenue Code sec. 151(e).

16 (b) The credit allowed under this section may not exceed \$500 for
17 each individual whose tuition is paid by the taxpayer.

18 (c) No credit is allowable under this section for amounts paid
19 during the year for the education of the spouse of a taxpayer unless the
20 taxpayer is entitled to a personal exemption for the spouse under
21 Internal Revenue Code sec. 151(b) or the taxpayer files a joint return
22 with the spouse.

23 (d) In this section "eligible educational institution" means an
24 institution of higher education, a vocational school, a secondary school
25 or an elementary school which meets accreditation or approval criteria
26 established by the department by regulation. *ORA CHURCH SCHOOL*

27 * Sec. 2. This Act is retroactive to January 1, 1978. *1979*

28 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
29 070(c).

SB 48

MEMO

TO: SEN. HACKNEY

FROM: PAUL

Paul

FEB 28

RE: Today's Committee Bills
SB 48
SJR 14
SB 214

SB 48

What Sen. Bradley wants to do with this bill is provide some relief for taxpayers who are paying the astronomical costs of tuition to send either themselves, spouse, or kids to school. His means of obtaining this objective is by allowing for a tax credit (sec 1 (a)) to the individual on his income tax of 50% of the amount of tuition paid during that year not to exceed \$500 for each individual (sec 1 (b)) (i.e. if he's going to school, his wife is going to school and his son is going to school, he could possibly get a tax credit of up to \$1500, dependent on the amount of the tuition paid out for that year -- remember, according to this bill the tax credit is for 50% of the tuition paid not exceeding \$500 for each individual).

A safeguard is provided in section 1(c) making sure that the credit is not granted twice when it can only be used once.. i.e. its saying that the only time that an individual can claim the spouse's tuition costs is when the taxpayer (individual) is entitled to a personal exemption for the spouse or they file jointly. This is to prevent a couple who has separated and who are filing separately from both using this tax credit when filing.

Section 1(d) defines "eligible education institutions" that this bill would deal with. It should be noted that Sen. Bradley includes elementary & secondary schools, as well as, institutions of higher education in this bill. So he is seeking relief for those parents who pay to have their kids go to private grade school and high school, and not just coming to the aid of those burdened with the high costs of college tuition.

Section 2 of the bill makes the bill retro to Jan '78.

Section 3 of the bill stipulates that the Act will take effect immediately.

Regarding this bill, I spoke with Paul Taylor, an acquaintance of mine, who is an auditor with the Audit Division, Dept of Revenue, in reference to the mechanics of this bill and he had these comments:

Section 1(a) - he said the only change he would make here would be to delete the word "personal" on line 14 and have it read simply "and dependents the individual is entitled to claim as exemptions under Internal Revenue Code (IRC) 151 (e)." The reason for this is

because the individual claims himself as a "personal" exemption (in which he can exempt \$750 for himself personally) and his spouse and kids are his "additional" (not personal) exemptions (see IRC 151 (b) & (e) attached). He said this is just a technical change and not that big of a deal. He said "I guess you could read the language in such a way that his spouse and kids could be classified as personal exemptions without much difficulty.

Section 1(b) - He said he would insert the words on line 17, between individual and whose, the language "specified in section 1(a)", to clarify that this credit is for himself, spouse and dependents as stated in section 1(a). Credit would not apply if the individual is paying the neighbor kid's tuition or something like that. It has to apply to the individual or his spouse or kids.

Section 1(c) - He says as far as he is concerned this language is redundant. According to him, the only time an individual is entitled to claim his spouse as a personal exemption is when they file jointly (so there is no need to make the distinction). He said you might have a situation where a married man is the only one working and the wife is taking care of the kids and the husband files separately, claiming his wife as a dependent (which he doesn't think he can do), but, if he could, it would be to his disadvantage to file this way because he would be losing money, so he doesn't see why anyone would do it. So he says that you could just have it read "unless the taxpayer files a joint return with the spouse", instead of the language on line 20 stating "taxpayer is entitled to a personal exemption for the spouse under IRC sec. 151(b) or the taxpayer files a joint return with the spouse.

SJR 14

This resolution urges the IRS to delay promulgation of its regulations which would remove the tax-exempt status of private schools which do not meet stringent and capricious affirmative action requirements and quotas. Also, it urges Congress to weigh the effects of such regulations and take appropriate action.

SB 214

Your bill, providing financial assistance to elderly people who need emergency dental service or denture services and are not eligible to receive financial assistance under current federal programs such as medicaid or medicare.

NOTE: REMEMBER, WE ARE TELECONFERENCING TODAY.

Sec. 151. Allowance of deductions for personal exemptions.**(a) Allowance of deductions.**

In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) Taxpayer and spouse.

An exemption of \$750 for the taxpayer; and an additional exemption of \$750 for the spouse of the taxpayer if a joint return is not made by the taxpayer and his spouse, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional exemption for taxpayer or spouse aged 65 or more.

(1) For taxpayer. An additional exemption of \$750 for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(2) For spouse. An additional exemption of \$750 for the spouse of the taxpayer if a joint return is not made by the taxpayer and his spouse, and if the spouse has attained the age of 65 before the close of such taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(d) Additional exemption for blindness of taxpayer or spouse.

(1) For taxpayer. An additional exemption of \$750 for the taxpayer if he is blind at the close of his taxable year.

(2) For spouse. An additional exemption of \$750 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

(3) **Blindness defined.** For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(e) Additional exemption for dependents.

(1) In general. An exemption of \$750 for each dependent (as defined in section 152)—

(A) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than \$750, or

(B) who is a child of the taxpayer and who (i) has not attained the age of 19 at the close of the calendar year in which the taxable year of the taxpayer begins, or (ii) is a student.

(2) Exemption denied in case of certain married dependents. No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) **Child defined.** For purposes of paragraph (1)(B), the term "child" means an individual who (within the

meaning of section 152) is a son, stepson, daughter, or stepdaughter of the taxpayer.

(4) **Student defined.** For purposes of paragraph (1)(B)(ii), the term "student" means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii); or

(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

In '76, P. L. 94-455, Sec. 1901(a)(23), amended para. (c)(4), for tax yrs. begin. after '76. Prior to amendment para. (c)(4) read as follows:

"(4) Student and educational institution defined. For purposes of paragraph (1)(B)(ii), the term "student" means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

"(A) is a full-time student at an educational institution, or
 "(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a State or political subdivision of a State.

For purposes of this paragraph, the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on."

In '71, P. L. 92-178, Secs. 201(a)(1) and (b)(1) changed the personal exemption, additional exemptions, exemptions for dependents, and allowable gross income for dependents in subsecs. (b), (c), (d), and (e) as listed in the caption, above. The amendment provided that wherever it appeared in Code Sec. 151, \$650 was to be changed to \$675 for tax yrs. begin. after 12/31/70 and before 12/31/71 and \$750 for tax yrs. begin. after 12/31/71.

In '69, P. L. 91-172, Secs. 801(a)(1), (b)(1), (c)(1) and (d)(1) changed the personal exemption, additional exemptions, exemption for dependents, and allowable gross income for dependents in subsecs. (b), (c), (d), and (e) as listed in the caption, above. The amendment provided that wherever it appeared in Code Sec. 151, \$600 was to be changed to \$625 for tax yrs. begin. in '70, \$650 for tax yrs. begin. in '71, \$700 for '72, and \$750 for '73 and thereafter. Prior to amendment the figure for tax yrs. begin. before '70 was \$400.

— P. L. 91-172, Sec. 941(b), substituted "if a joint return is made by the taxpayer and his spouse" for "if a separate return is made by the taxpayer" in subsecs. (b) and (c)(2), for tax yrs. begin. after 12/31/69.

Sec. 152. Dependent defined.**(a) General definition.**

For purposes of this subtitle, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) or (e) as received from the taxpayer):

- (1) A son or daughter of the taxpayer, or a descendant of either,
- (2) A stepson or stepdaughter of the taxpayer,
- (3) A brother, sister, stepbrother, or stepwister of the taxpayer,
- (4) The father or mother of the taxpayer, or an ancestor of either,
- (5) A stepfather or stepmother of the taxpayer,
- (6) A son or daughter of a brother or sister of the taxpayer,
- (7) A brother or sister of the father or mother of the taxpayer,
- (8) A son-in-law, daughter-in-law, father-in-law,

mother-in-law, brother-in-law, or sister-in-law of the taxpayer, or

(9) An individual (other than the taxpayer) who, for the taxable year in which the taxable year of the taxpayer begins, has as his principal place of abode the same household as the taxpayer and is a member of such household.

(b) Rules relating to general definition.

For purposes of this section—

(1) The terms "brother" and "sister" include a brother or sister by the half.

(2) In determining whether a dependent exists, a legal individual (and a child who is a member of the taxpayer's household, if placed in the household by an authorized placement agency for such individual), or a foster child (and a child who is a member of the taxpayer's household, if placed in the household by an authorized placement agency for such child) who satisfies the requirements of (a)(9) with respect to such individual shall be treated as a child of such individual.

(3) The term "dependent" includes an individual who is not a citizen of the United States unless such individual is a resident of the United States or of a political subdivision of the United States. The preceding sentence shall not apply to an individual who is a dependent of the taxpayer legally at the close of the taxable year of the taxpayer's principal place of abode.

(4) A payment to a wife of the taxpayer which is not gross income of the wife and which is used for the support of any dependent shall not be treated as a payment to the dependent.

(5) An individual is not a dependent of the taxpayer if at any time during the taxable year the taxpayer and the individual are members of the same household and the taxpayer is in the household.

(c) Multiple support agreement.

For purposes of subsection (a), an individual shall be treated as received from the taxpayer if—

- (1) no one person can be treated as the taxpayer's support;
- (2) over half of such support is provided by the taxpayer; and
- (3) the taxpayer contributes more than half of such support (and is not entitled to claim such support for a taxable year beginning in the calendar year in which the taxable year of the taxpayer begins).

(d) Special support test in case of multiple support agreement.

For purposes of subsection (a), an individual who is—

- (1) a son, stepson, daughter, or sister of the taxpayer (within the meaning of section 152),

United States Senate

WASHINGTON, D. C. 20510

January 19, 1979

COMMITTEES:
APPROPRIATIONS
COMMERCE, SCIENCE AND
TRANSPORTATION
GOVERNMENTAL AFFAIRS

Pastor George W. McNeven
Bethel Assembly of God
224 Fourth Street
Juneau, Alaska 99801

Dear George:

During the week of December 5th the IRS held hearings on these proposed regulations which would change the tax-exempt status of private schools. The opposition has been so overwhelming that the IRS is expected to revise these regulations after the House Ways and Means Committee holds hearings in January.

Last year I advised the Commissioner of the Internal Revenue Service of my strong objections to these proposed regulations and urged that they not be implemented.

With best wishes,

Cordially,



TED STEVENS
United States Senator

LIST OF WITNESSES FOR SENATE HESS TELECONFERENCE ON 2/28, as of 3:30pm - 2/27

Anchorage:

Dean Zinck, re: SB 48	student at University
Rob Moran, re: SB 48	Alaska Student Lobby Assn.
Kay Frank (Palmer)	Chairman, Citizens Legislative Committee
Burton Carney	
Janice Bigelow	
Rev. Jerry Prevo	
Albert Keyes	
Elaine Dollar	
Ludwig Zerbe	
Ed Rinner	
Jack Docher	
Joseph Sternmetz	
Richard Soverns	parent of child attending Harvester Christian Academy

THESE FOUR PEOPLE, EITHER ADMINISTRATORS OR
TEACHERS OF THE ANCHORAGE CHRISTIAN SCHOOL,
WILL BE TESTIFYING:

MR. O'BRIEN ✓
MR. HOVEY ✓
MR. ~~MORAN~~ KING ✓
MISS HANSON

Emily Hatfield SB 48
SB 14

PASTOR MCNEVEN - SB 48
GARY JENKINS - REV. DEPT. SB 48
JANICE GATES

Robert Hemenway } SB 14
~~Robert Hemenway~~ } SB 48
SIRLEY HEMINGWAY } SB 14
Lindsay Townsend SB 14
Denise Knapp SB 214
(Celia Bennett)
Jana Davvati SB 214

Judy Hopkins
Judy Davis

Please sign to verify

THIRK

Center - Mountain USA
GARCIA, JUANITA
RAN FLORES
13012 1/2

LEFT
MONTANA
AUSA, AUSA

1111 77
- 33 214
SB 48
SB 45
SR 48

More names of people testifying
on today's bills via Teleconference:

James Stevens Alaska Pacific Univ ~~SB 48~~ SB 48
~~SB 48~~

Patricia Steinmetz SB 48

SR 14

Bill Leight

SB 48

SR 14

Glenn Clary

SB ~~48~~ 48

SR 14

Nancy Mankley will be observing -
She is from Gnauel's office

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-467-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 25, 1979

SUBJECT: State Aid to Private Education
(Work Order No. 6089)

TO: Representative Terry Martin

FROM: Kenneth E. Vassar
Legislative Counsel *KEV*

Here are the documents I believe you were referring to this morning, with an extra. I have numbered them (1) - (3). Number 1 is the constitutional provision as it exists today. The last sentence of Article VIII, sec. 1, is the prohibition against state aid to private schools. Number 2 is the amendment that was before the voters in 1976. This section of the constitution has been subject to many attempted amendments in the past. To the best of my knowledge, the amendment proposed by Number 2 (HJR 73 -1976) is the only one to actually pass the legislature and be placed on the ballot. Number 3 is another attempted amendment which did not pass the legislature. It was also introduced in 1976. I have included it just to give you an idea of some of the alternatives that are available. The resolution I drafted for you would simply eliminate the last sentence of Article VIII, sec. 1. This, in my opinion, would remove any state constitutional obstacles and place us directly under the controlling language of the United States Constitution. If there is anything else I can do for you, let me know.

Incidentally, your tax credit bill has been prepared and should be delivered to you within the next day or two with a memo explaining the constitutional problems I see with the bill.

KEV:jdn

Enclosures

Enforcement

SECTION 11. Any qualified voter may apply to the superior court to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment. Application to compel the governor to perform his reapportionment duties must be filed within thirty days of the expiration of either of the two ninety-day periods specified in this article. Application to compel correction of any error in redistricting or reapportionment must be filed within thirty days following the proclamation. Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause shall be reviewed by the supreme court upon the law and the facts.

ARTICLE VII

HEALTH, EDUCATION, AND WELFARE

Public Education

SECTION 1. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. [No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.]

State University

SECTION 2. The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

Board of Regents

SECTION 3. The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance

Introduced: 5/7/76
Referred: Judiciary

IN THE HOUSE BY THE SELECT COMMITTEE ON EDUCATION
HOUSE JOINT RESOLUTION NO. 73 as S
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Constitution
of the State of Alaska relating to state
aid to private educational institutions.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. Article VII, sec. 1, Constitution of the State of Alaska,
is amended to read:

SECTION 1. PUBLIC EDUCATION. The legislature shall by general law
establish and maintain a system of public schools open to all children
of the State, and may provide for other public educational institutions.
Schools and institutions so established shall be free from sectarian
control. No money shall be paid from public funds for the direct
benefit of any religious or other private educational institution, how-
ever nothing in this section shall prevent direct aid to students in
accordance with the law.

Sec. 2 The amendment proposed by this resolution shall be placed
before the voters of the state at the next general election in conformity
with art. XIII, sec. 1, Constitution of the State of Alaska, and the election
laws of the state.

*This was voted down by the public
in the 1976 election.*

1976
S. 10000 Judicial

1 IN THE HOUSE BY THE SELECT COMMITTEE ON EDUCATION
2 HOUSE JOINT RESOLUTION NO. 10005
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 NINTH LEGISLATURE - SECOND SESSION

5 Prop also an amendment to the Constitution
6 of the State of Alaska relative to state
7 aid to private educational institutions.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA,

9 Section 1. Article III, section 1, Constitution of the State of Alaska,
10 is amended to read:

11 SECTION 1. PUBLIC EDUCATION. The legislature shall by general law
12 establish and maintain a system of public education open to all children
13 of the State, and may provide for nonpublic schools and institutions
14 whose aid and facilities to be paid shall be limited to the extent
15 of the law. No money shall be paid from public funds for the operation
16 of any religious or other private educational institution.

17 Section 2. The amendment set by this act shall take effect
18 before the next session of the legislature at its next regular session, and shall
19 be subject to the approval of the voters of the State at the next
20 general election of the State.

21 *This was defeated by the voters in 1976*
22 *election.*

ALASKA'S CONSTITUTIONAL CONVENTION

GOVERNMENTAL FUNCTIONS AND RESPONSIBILITIES

Health, Education, and Welfare

Article VII, on health, education, and welfare, is the briefest in the constitution. One section covers public education, two sections establish the University of Alaska as a single unified system of higher education, and two one-sentence sections provide for public health and welfare. Except for the proposed prohibition of public funds being used for direct benefit of private educational institutions, the article was not controversial. Lack of disagreement was due to the fact that the functions covered by the article were already being carried out under the territorial government.

Responsibility for Article VII was given to the Committee on Preamble and Bill Rights, primarily because the social services covered by the article were extensions of the rights and privileges of the people. The final draft was a series of concise statements requiring the legislature to provide for public education, health, and welfare.

In drafting the section on education, the committee included language that covered a standard feature of past and present statehood enabling bills, namely that "provision shall be made for the establishment and maintenance of a system of public schools which shall be open to all children of said state and free from sectarian control."

The only significant point raised in plenary consideration of the committee proposal was a suggested amendment to insert the words "and indirect" after "direct" in the draft provision "No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." Proponents of the proposed amendment stressed the importance of protecting the integrity of public education, while its opponents argued for the provision of services to the individual student if otherwise in keeping with the constitution. The proponents of the amendment to prohibit "direct and indirect" aid to parochial and other private schools held that sectarian segregation in education is bad for school children and that inadequate restriction could lead to diversion of funds and weakening of public education. A majority (thirty-four to nineteen) opposed the amendment, agreeing with those who argued that more important than these considerations was the need to help each child attain the fullest level of individual development through programs such as free lunches, bus transportation, and even payment by the state welfare agency of room and board to parentless children, so long as the basic principle of separation of church and state was maintained.

A floor amendment to provide for a unified state library service was rejected by the delegates as falling into the area of legislation and therefore not being proper constitutional material.

A proposal to altogether strike the health and public welfare provisions was made by Seaborn Backalew of Anchorage on the grounds that they were already covered by the general welfare clause and were also unnecessary in the constitution. However, Rolland Armstrong of Sitka and others argued for their inclusion as a matter of philosophy, and on a voice vote the amendment was defeated.

Before final adoption of the constitution, the convention added the two sections providing for the state university and its board of regents. Provisions for the university had been part of the executive article dealing with boards and commissions of that article. It was suggested during consideration of the executive branch proposal that the requirement for approval by the governor of the appointment of executive officers of principal departments headed by boards and commissions would not be appropriate to the university and the board of regents. As a result, a separate proposal on the university was offered by the Committee on the Executive Branch for inclusion in the article on general provisions. It was later transferred by the Style andrafting Committee to the article dealing with education.

The provisions for a single state university system, established as a separate corporate body, and for a board of regents appointed by the government and confirmed by the legislature was modeled on the Hawaii constitution. As approved, the university was given constitutional status and removed from direct supervision of the governor.

OHIO STATE LAW JOURNAL

Terry Martin
465-4943-Juneau
333-7432-Duck.

Volume 38
Number 4
1977

Constitutional Validity of State Aid to Pupils in
Church-Related Schools—Internal Tension Between
the Establishment and Free Exercise Clauses

DAVID J. YOUNG

Constitutional Validity of State Aid to Pupils in Church-Related Schools—Internal Tension Between the Establishment and Free Exercise Clauses

DAVID J. YOUNG*

I. INTRODUCTION

The Supreme Court's recent decision in *Wolman v. Walter*¹ raises again the question whether the "final page" has been written with respect to a troublesome period in the constitutional development of religion clause² principles. The United States Supreme Court has now addressed itself to a complete array of state aid programs designed to assist pupils attending church-sponsored educational institutions. After thirty years of intensive litigation the slate looks something like this:

Year	Programs in Conformity with First Amendment	Programs Violative of First Amendment
1947	School bus transportation ³	
1968	Textbook loans ⁴	
1970	Real property tax exemption for religious organizations ⁵	
1971	Federal construction grants for church-related colleges ⁶	Salary supplements for lay teachers ⁷ Secular education service contracts calling for state to pay nonpublic school for providing secular education ⁸

*Member, Ohio Bar. Mr. Young is a member of the firm of Dunbar, Kienle & Murphey, Columbus, Ohio. The author argued *Wolman v. Walter* before the United States Supreme Court for appellates.

1. 97 S. Ct. 2593 (1977).

2. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. amend. I. The religion clause comprises two parts: the establishment clause prohibits the government from promoting religion and the free exercise clause prohibits the government from inhibiting religion.

3. *Everson v. Board of Educ.*, 330 U.S. 1 (1947).

4. *Board of Educ. v. Allen*, 392 U.S. 236 (1968).

5. *Walz v. Tax Comm'n*, 397 U.S. 664 (1970).

6. *Tilton v. Richardson*, 403 U.S. 672 (1971).

7. *Lemon v. Kurtzman* [*Early v. DiCenso*], 403 U.S. 602 (1971) (*Early* was a case arising out of Rhode Island that was consolidated with the Pennsylvania case, *Lemon v. Kurtzman*, for purposes of appeal).

8. *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (Pennsylvania statute declared unconstitutional).

- 1973 Tax-exempt bond assistance for construction at church-related colleges⁹
- Grants to schools for cost of general testing and record-keeping¹⁰
- Tuition reimbursement for low income parents¹¹
- Parental tax credits¹¹
- Grants to schools for maintenance and repair¹¹
- Parental reimbursement grants¹²
- 1975
- Instructional equipment and material loaned to schools¹³
- On-premises health and remedial services¹³
- 1976 Direct, per-student grants to church-related colleges¹⁴
- 1977 Standardized tests and scoring services¹⁵
- Speech and hearing diagnostic services¹⁵
- Physician, dental, and optometric services¹⁵
- Neutral-site therapeutic services¹⁵
- Neutral-site remedial education services¹⁵
- Programs for handicapped¹⁵
- Neutral-site guidance and counseling¹⁵
- Assistance grants for students attending church-related colleges¹⁶
- Instructional equipment and material loaned to pupil¹⁵
- Field trip transportation¹⁵

In its 1976 decision in *Roemer v. Board of Public Works*¹⁷ the Supreme Court intimated that the end of the line was near:

[T]he slate we write on is anything but clean. Instead, there is little room

9. *Hunt v. McNair*, 413 U.S. 714 (1973).

10. *Levitt v. Committee for Pub. Educ.*, 413 U.S. 472 (1973).

11. *Committee for Pub. Educ. v. Nyquist*, 413 U.S. 756 (1973).

12. *Sloan v. Lemon*, 413 U.S. 825 (1973).

13. *Meeck v. Pittenger*, 421 U.S. 349 (1975).

14. *Roemer v. Board of Pub. Works*, 426 U.S. 736 (1976).

15. *Wolman v. Walter*, 97 S. Ct. 2593 (1977).

16. *Americans United for Separation of Church and State v. Blanton*, 433 F. Supp. 97 (M.D. Tenn. 1977), *aff'd mem.*, 98 S. Ct. 39 (1977).

17. 426 U.S. 736 (1976).

for further refinement of the principles governing public aid to church-affiliated private schools. Our purpose is not to unsettle those principles . . . or to expand upon them substantially, but merely to insure that they are faithfully applied in this case.¹⁸

Similarly in *Wolman*, Justice Blackmun observed: "Nonetheless, the Court's numerous precedents 'have become firmly rooted, . . . ' and now provide substantial guidance."¹⁹ Justice Stewart, the author of the majority opinion in *Meek v. Pittenger*,²⁰ saw himself as applying tests which constituted a distillation of the past decades of effort:

These tests constitute a convenient, accurate distillation of this Court's efforts over the past decades to evaluate a wide range of governmental action challenged as violative of the constitutional prohibition against laws "respecting an establishment of religion," and thus provide the proper framework of analysis for the issues presented in the case before us.²¹

Notwithstanding these assurances by the Court that this area of the law is settled, the question still remains: has the thoughtful scholarship of the Supreme Court's most respected Justices provided a framework that will avoid continued controversy? This article will show that they have not. Despite the strong assertions in recent decisions by the Court that religion clause principles are well defined, the fact is that there have been periodic major shifts in the factors the Court considers in judging the constitutionality of a state aid program. These shifts have had a divisive impact on the Court. In recent years this division has resolved itself into a three-way split. This article attempts to identify the current trend of the Court in state aid cases by analyzing this split and the recent movement of the swing group of Justices.

II. CHARTING A NEUTRAL COURSE BETWEEN THE FREE EXERCISE AND ESTABLISHMENT CLAUSES—THE TRIPARTITE SPLIT IN THE COURT

Two issues must be addressed any time a state aid program is presented to the Court. The first, which may be called the establishment issue, is raised by opponents of state aid to sectarian schools. The argument is that such aid constitutes a prohibited "establishment of religion," or at least the first step toward such an establishment. The second issue, which may be called the free exercise issue, is advanced by proponents of the state assistance program. The proponents feel that since they pay education taxes a portion of the tax

18. *Id.* at 754.

19. *Wolman v. Walter*, 97 S. Ct. 2593, 2599 (1977).

20. 421 U.S. 349 (1975).

21. *Id.* at 358.

proceeds should be used to help finance their children's education. Without an allocation of tax funds toward the education of their children, they are forced either to bear the financial burden of paying twice for their children's education—once through taxes and once through tuition—or to send their children to the public school. This, proponents assert, restricts their freedom of choice and inhibits their "free exercise" of religion.

In an attempt to reconcile the constitutional conflict between the establishment and free exercise clauses the Court developed a three-part test for judging the various state programs. "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . ; finally, the statute must not foster 'an excessive government entanglement with religion.'"²²

Careful analysis reveals that the relative significance of the establishment clause and the free exercise clause in first amendment cases is sometimes ignored. Justice Brennan, who now maintains that almost all forms of assistance to pupils at church-related schools is violative of the establishment clause, recognized a place for the free exercise doctrine in his concurring opinion in *Abington School District v. Schempp*.²³

Attendance at the public schools has never been compulsory; parents remain morally and constitutionally free to choose the academic environment in which they wish their children to be educated. The relationship of the Establishment Clause of the First Amendment to the public school system is preeminently that of reserving such a choice to the individual parent, rather than vesting it in the majority of voters of each State or school district. The choice which is thus preserved is between a public secular education with its uniquely democratic values, and some form of private or sectarian education, which offers values of its own. In my judgment the First Amendment forbids the State to inhibit that freedom of choice by diminishing the attractiveness of either alternative—either by restricting the liberty of the private schools to inculcate whatever values they wish, or by jeopardizing the freedom of the public schools from private or sectarian pressures. The choice between these very different forms of education is one—very much like the choice of whether or not to worship—which our Constitution leaves to the individual parent. It is no proper function of the state or local government to influence or restrict that election.²⁴

In spite of his recognition of free exercise values, Justice Brennan has been unwilling to concede that placing a condition—attendance at the public schools—upon a gratuitous state benefit can discourage the free exercise of religion by "diminishing the attractiveness" of the

22. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (citation omitted).

23. 374 U.S. 203 (1963).

24. *Id.* at 242 (Brennan, concurring).

church-related school. Such an attitude toward free exercise objectives led to Chief Justice Burger's plea:

One can only hope that, at some future date, the Court will come to a more enlightened and tolerant view of the First Amendment's guarantee of free exercise of religion, thus eliminating the denial of equal protection to children in church-sponsored schools, and take a more realistic view that carefully limited aid to children is not a step toward establishing a state religion—at least while this Court sits.²⁵

The Court's difficulty with this perplexing question has been aggravated by its necessity of fashioning majority votes on a patchwork, case-by-case basis. The opinion of the Court in *Walz v. Tax Commission*²⁶ reflects the difficulty encountered in attempts to fashion sweeping religion clause principles:

The Establishment and Free Exercise Clauses of the First Amendment are not the most precisely drawn portions of the Constitution. The sweep of the absolute prohibitions in the Religion Clauses may have been calculated; but the purpose was to state an objective, not to write a statute. In attempting to articulate the scope of the two Religion Clauses, the Court's opinions reflect the limitations inherent in formulating general principles on a case-by-case basis. The considerable internal inconsistency in the opinions of the Court derives from what, in retrospect, may have been too sweeping utterances on aspects of these clauses that seemed clear in relation to the particular cases but have limited meaning as general principles.

The Court has struggled to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other.²⁷

In an amicus brief, Leo Pfeffer, who has argued a great number of the religion clause cases before the Supreme Court of the United States, described the past decades of constitutional history in this area as a "historic game of chess." Although cases were won or lost and governing principles seemed well defined, the fact is that the pieces of the jigsaw puzzle were being "forced together."²⁸ The compromise, case-by-case approach utilized by the Court has misled both proponents and opponents of state assistance to nonpublic pupils and has fostered continued litigation. Legislation was drafted in reliance on sweeping utterances that in retrospect proved to be illusory.

In practice the tripartite test articulated by the Court does little to balance the competing interests embodied in the two religion clauses. The Court itself now speaks of the test only as a guide with

25. *Meek v. Pittenger*, 421 U.S. 349, 387 (1975).

26. 397 U.S. 664 (1970).

27. *Id.* at 608-69.

28. Brief of National Coalition for Public Education and Religious Liberty Amicus Curiae at 10, *Woburn v. Water*, 97 S. Ct. 2593 (1977).

which to identify instances in which the objectives of the establishment clause have been impaired. This tripartite test, however, serves more as a framework for structuring opinions than as a guidepost for determining the outcome. The objectives of the establishment clause, likewise, are too vague to be outcome-determinative. An analysis and understanding of the three-way split among the Supreme Court Justices,²⁹ however, may be more productive in predicting whether a given aid program will withstand religion clause challenge. Chief Justice Burger and Justices Rehnquist and White seem prepared to approve a broad range of meaningful child benefit programs in the form of grants, credits, scholarships, loans, and vouchers.³⁰ On the other hand, it is with a great deal of reluctance that Justices Brennan, Marshall, and Stevens approve even health-related services.³¹ The middle is comprised of Justices Blackmun, Powell, and Stewart, and the outcome of future constitutional challenges will depend on the direction in which they lean.³²

29. The tension among the members of the Court is perhaps not fully revealed by the opinions themselves. The depth and intensity of these tensions may very well stand currently as a barrier to the formation of a predictable and stable five-Justice coalition. This internal tension is explainable in part by the frustration that must flow from the Court's apparent inability to formulate a comprehensive analysis in this troublesome area, and also by the compromises required to obtain five votes. The internal tension is also a natural by-product of a case-by-case legislative approach that has backfired because of a failure to consider fully the implications of pronouncements in a given case upon future challenges.

The tension and frustration within the Court is undoubtedly aggravated by the fact that the Court has had to make decisions that vitally affect the inculcation of religious belief, the extension of knowledge, and the education of children on the basis of abbreviated stipulations of fact, facial challenges, or evidentiary transcripts that barely pierce the surface of relevant educational and religious developments. The difficulties arising from inadequate factual development are further compounded by the lack of historical record or legislative history with respect to the religion clause. There were no public schools when the first amendment was adopted, and the structure of American education has changed markedly since then. The religion clause preceded general acknowledgment of the need for universal formal education. See *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972). Thus, the Court for decades has been forced into a situation of attempting to apply vaguely defined principles to an ever-shifting set of circumstances and considerations from which it has not yet been able to extricate itself.

30. See, e.g., *Wolman v. Walter*, 97 S. Ct. 2593 (1977) (Burger, C.J., and White and Rehnquist, JJ., voted to uphold all six categories of aid presented to the Court); *Roemer v. Board of Pub. Works*, 426 U.S. 736 (1976) (Burger, C.J., and White and Rehnquist, JJ., voted to uphold direct, per-student grants to church-related colleges); *Meek v. Pittenger*, 421 U.S. 349 (1975) (Burger, C.J., and White and Rehnquist, JJ., voted to uphold all three types of aid presented to the Court).

31. See, e.g., *Wolman v. Walter*, 97 S. Ct. 2593 (1977) (Brennan and Marshall, JJ., voted to strike down all six categories of aid presented to the Court; Stevens, J., voted to strike down four categories of aid and to uphold diagnostic and therapeutic services, the latter two with "givings"); *Roemer v. Board of Pub. Works*, 426 U.S. 736 (1976) (Brennan, Marshall, and Stevens, JJ., voted to strike down direct, per-student grants to church-related colleges); *Meek v. Pittenger*, 421 U.S. 349 (1975) (Brennan and Marshall, JJ., voted to strike down all three types of aid presented to the Court).

32. See, e.g., *Wolman v. Walter*, 97 S. Ct. 2593 (1977) (Blackmun and Stewart, JJ., voted to uphold four of the six categories of aid presented to the Court and to strike down loans of instructional material and field trip transportation; Powell, J., voted to uphold five categories and to strike down loans of instructional material); *Roemer v. Board of Pub. Works*, 426 U.S. 736 (1976) (Blackmun and Powell, JJ., voted to uphold and Stewart, J., voted to strike down direct, per-student grants to church-related colleges); *Meek v. Pittenger*, 421 U.S. 349 (1975) (Stewart, Powell, and Blackmun, JJ., voted to uphold textbook loans and to strike down loans

In order to appreciate the current alignment of the Justices and the state of the law after *Walman* it is necessary to consider the historical positions of the Court. It is important to note that prior to 1971 the Court generally affirmed state aid to church-related schools. In that year the Court abruptly shifted its position regarding aid to elementary and secondary schools. Now, after *Walman*, it appears that the Court is swinging back toward approval of some programs.³³ This article focuses on these swings and pays particular attention to the pivotal cases *Walz v. Tax Commission*³⁴ and *Walman v. Walter*.³⁵ As will be seen, *Walz* marked the end of Supreme Court approval of state aid to church-sponsored schools and began a period in which every state program, with the exception of aid to sectarian colleges, was struck down. *Walman* is now the first case to turn away from the strict position the Court has held since *Walz*.

III. PRE-*Walz* CRITERIA: SECULAR PURPOSE AND EFFECT

The first case to consider the relationship between state aid to church-sponsored education and the religion clause was *Everson v. Board of Education*.³⁶ New Jersey had enacted a law that would reimburse parents for the expense of busing their children to public and parochial schools. The *Everson* Court said that "the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'"³⁷ The Court held that the New Jersey program had not made the slightest breach in the wall of separation. The Court further held that to prohibit the state from extending general welfare benefits to *all* of its children would be to violate the neutral position required by the first amendment.³⁸

Between 1947 and 1968 *Everson* stood as the leading case in the religion clause field. The principles first set forth in *Everson* were further refined during the two decades following its decision³⁹ and were applied again to a nonpublic school aid case in the form of a two-part purpose-and-effect test⁴⁰ in *Board of Education v. Allen*.⁴¹

of instructional material and on-premises health and remedial services). Note that the positions taken by these Justices have determined the holding of the Court.

33. For a graphic representation of the swings in the Court, see the chart in section I of this article.

34. 397 U.S. 664 (1970).

35. 97 S. Ct. 2593 (1977).

36. 330 U.S. 1 (1947).

37. *Id.* at 16.

38. *Id.* at 18.

39. See, e.g., *McGowan v. Maryland*, 366 U.S. 420 (1961), which upheld the constitutionality of Sunday sales prohibition laws; *Zorach v. Clauson*, 343 U.S. 306 (1952), which upheld the constitutional validity of programs permitting public schools to release students during the school day who desire to attend off-premises religion courses.

40. The two-part test was first laid down in the context of a school prayer case, *Abington School Dist. v. Schempp*, 374 U.S. 203 (1963).

41. 392 U.S. 236 (1968).

The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.⁴²

In *Allen* the Court upheld a New York program whereby local school boards loaned approved textbooks to all children, including sectarian school students, in grades seven through twelve. Before the Court was able to find "a secular legislative purpose and a primary effect that neither advances nor inhibits religion,"⁴³ it was necessary for the Court to declare that the "processes of secular and religious training [in church-sponsored schools] are [not] so intertwined that secular textbooks furnished to students by the public are in fact instrumental in the teaching of religion."⁴⁴

The *Allen* Court's recognition of the valuable role played by nonpublic education was obviously a key factor in the decision. Justice White, writing for the majority, utilized language that greatly increased the hope and expectations of proponents of aid to nonpublic school pupils:

Underlying these cases, and underlying also the legislative judgments that have preceded the court decisions, has been a recognition that private education has played and is playing a significant and valuable role in raising national levels of knowledge, competence, and experience. Americans care about the quality of the secular education available to their children. They have considered high quality education to be an indispensable ingredient for achieving the kind of nation, and the kind of citizenry, that they have desired to create. Considering this attitude, the continued willingness to rely on private school systems, including parochial systems, strongly suggests that a wide segment of informed opinion, legislative and otherwise, has found that those schools do an acceptable job of providing secular education to their students. This judgment is further evidence that parochial schools are performing, in addition to their sectarian function, the task of secular education.⁴⁵

Many nonpublic school parents, educators, and administrators read *Allen* as saying that carefully drafted aid programs that have the primary effect of aiding the secular educational functions in their schools would satisfy establishment clause restraints. It is difficult to quarrel or find fault with this interpretation. This is obviously why opponents of nonpublic school aid have sought repeatedly during the past nine years to convince the Supreme Court that *Allen* should be reversed. In recent years, however, the Court has given little

42 *Id.* at 243 (quoting *Abington School Dist. v. Schempp*, 374 U.S. 201, 222 (1963))

43 *Id.*

44 *Id.* at 248.

45 *Id.* at 247-48.

more than lip service to the *Allen* principles⁴⁶ and has in fact emasculated its underpinnings. The two-part test has been accompanied by a third ingredient that has proved dominant in recent cases.

IV. INTRODUCTION OF THE ENTANGLEMENT TEST— THE IMPACT OF *Walz v. Tax Commission*

In 1970, the Supreme Court handed down a decision that has had perhaps a greater impact upon the education cases than any case since *Everson*. *Walz v. Tax Commission*⁴⁷ questioned the constitutional validity of real property tax exemptions for property used exclusively for religious purposes. The plaintiff, a real property owner, sought an injunction to prevent the granting of property tax exemptions to religious properties, arguing that such exemptions forced him to make a contribution to religious bodies contrary to the establishment clause. In determining the constitutional validity of such exemptions, the Court looked to whether taxation or exemption occasioned a greater degree of involvement between government and religion, thus evidencing its concern with the amount of entanglement between secular and sectarian interests. The Court commented in dictum: "Obviously a direct money subsidy would be pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards."⁴⁸ Although the Supreme Court had in prior decisions showed a concern about the degree of involvement between government and religion, this dictum gave birth to a third and separate constitutional test for judging religion clause cases. Now, in addition to determining that the legislative purpose and effect of a state program did not promote or inhibit religion, it became necessary for a court to inquire whether the administration of the program fosters "excessive government entanglement with religion."⁴⁹

The first state aid to nonpublic school statutes to be tested subsequent to *Walz* were the Pennsylvania statute considered in *Lemon v. Kurtzman*,⁵⁰ and the Rhode Island statute considered in the companion case, *Earley v. DiCenso*.⁵¹ The Rhode Island statute called for a salary supplement to lay instructors teaching secular subjects in the Rhode Island parochial schools. The Pennsylvania statute called for a contractual relationship between the nonpublic school and the state under which the state reimbursed the nonpublic schools for providing

46 See, e.g., *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

47 397 U.S. 664 (1970).

48 *Id.* at 675.

49 *Id.* at 674.

50 403 U.S. 602 (1971).

51 *Id.*

teacher salaries, textbooks, and instructional materials in specified secular subjects. Both statutes were declared violative of the first amendment. Chief Justice Burger, who had authored the *Walz* opinion, delivered the opinion of the Court in which the purpose and effect test in *Allen* became a tripartite inquiry:

Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . ; finally, the statute must not foster "an excessive government entanglement with religion."⁵²

Both statutes passed the first prong of the tripartite inquiry; in neither the Pennsylvania nor the Rhode Island statutes did the Court find a nonsecular legislative purpose. The second inquiry, whether the principal or primary effect of the statutes was one that did not promote or inhibit religion, was a more difficult one for the Court to answer. Chief Justice Burger reasoned that it was possible for the legislatures of the respective states to identify secular aspects of a church-sponsored education and to design restrictions to insure that the state aid would benefit only the secular. The Court did not decide, however, whether the specific safeguards in the Pennsylvania and Rhode Island programs were sufficient to meet the primary effect test. Instead the Court condemned the programs because of the intrusiveness of the safeguards into the church-sponsored school: "This kind of state inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids. It is a relationship pregnant with dangers of excessive government direction of church schools and hence of churches."⁵³

If meaningful assistance to the nonpublic educational sector appeared dead as a result of the *Lemon* decision, *Committee for Public Education v. Nyquist*⁵⁴ seemed to complete the process and seal the coffin. The Supreme Court in *Nyquist* declared unconstitutional, as violative of the establishment clause, direct grants to nonpublic schools for maintenance and repair of school facilities and equipment, tuition reimbursement to low income parents of children attending nonpublic schools, and income tax relief to all such parents. On the same day as *Nyquist*, the Court also announced *Sloan v. Lemon*,⁵⁵ which declared Pennsylvania's parental reimbursement

52. *Id.* at 612-13 (citation omitted).

53. *Id.* at 620.

54. 413 U.S. 756 (1973).

55. 413 U.S. 825 (1973).

grants unconstitutional, and *Levitt v. Committee for Public Education*,⁵⁶ which declared unconstitutional the New York statute providing state reimbursement to nonpublic schools for testing and record-keeping. The cumulative impact of these decisions and that in *Lemon v. Kurtzman* was to place those who would seek to draft legislation providing nonpublic school assistance on the horns of a dilemma. If they included safeguards and procedures to insure that the assistance was limited to the secular aspects of nonpublic education, the restrictions would be classified as prophylactic contacts involving excessive government entanglement with religion. If the restrictions were removed, the program would fail because of the absence of assurance against advancement of religion.

Program safeguards and regulations were not the only kinds of church-state "entanglements" envisioned by the Court. In addition it saw a danger of "political divisiveness"⁵⁷ arising from the natural inclination of nonpublic schools to lobby in the legislatures for additional funds. Although he recognized that political debate and differences are normal and healthy manifestations of the democratic system of government, Chief Justice Burger declared that political division along religious lines was "one of the principal evils against which the First Amendment was intended to protect."⁵⁸ This test seemed based upon the assumption that as more assistance became available to nonpublic education, a greater demand would arise, and this demand would inevitably lead to political division along religious lines.

The negative attitude of the Supreme Court towards the "self-perpetuating and self-expanding propensities"⁵⁹ of state assistance to pupils at church-related educational institutions is reflected in Chief Justice Burger's belief that "[a] certain momentum develops in constitutional theory, and it can be a 'downhill thrust' easily set in motion but difficult to retard or stop."⁶⁰ The Court was obviously alarmed at the rapid step from *Allen* to *Lemon* and *DiCenso*. It was willing to allow bus rides and textbooks, but saw the prospect of much broader scale assistance when it looked at the teacher salary supplement program in *DiCenso* and the educational contract program in *Lemon*. The momentum was too much; the Court refused to adopt the philosophy of Justice Harlan that "[i]t is always possible to shrink from a first step lest the momentum will plunge the law into pitfalls

56 413 U.S. 472 (1973).

57 *Lemon v. Kurtzman*, 403 U.S. 602, 623 (1971).

58 *Id.*

59 *Id.* at 624.

60 *Id.*

that lie in the trail ahead. I, for one, however, do not believe that a 'slippery slope' is necessarily without a constitutional toehold."⁶¹

The repressive constitutional doctrine that was based on a fear of political divisiveness was spawned by the Court during its "momentum blocking" stage of development. Chief Justice Burger's enunciation of this doctrine in *Lemon* was surprising, if not shocking, in view of fact that just one year earlier in *Walz*, he had espoused the right of religious organizations and churches to take strong positions on public issues without the slightest suggestion that this would disqualify their adherents from participating in public benefits. The Chief Justice had written:

Adherents of particular faiths and individual churches frequently take strong positions on public issues including, as this case reveals in the several briefs *amici*, vigorous advocacy of legal or constitutional positions. Of course, churches as much as secular bodies and private citizens have that right. No perfect or absolute separation is really possible; the very existence of the Religion Clauses is an involvement of sorts—one that seeks to mark boundaries to avoid excessive entanglement.⁶²

It is perhaps understandable that the Court was concerned by the momentum that had gathered between *Allen* and *Lemon*; it is unfortunate, however, that the response between 1971 and 1975 was a series of case-by-case compromises rather than the development of constitutional principles of more lasting guidance. Beginning in 1971, the Court began a cut and paste process in deciding how far the program could proceed without reaching the verge of forbidden territory under the religion clauses. It refused to accept the invitation of opponents of such educational programs to declare them all violative of the establishment clause. On the other hand, there seemed to be no logical basis for distinguishing one program from the other. Sweeping utterances, seemingly clear in one case, had to be altered to meet the Court's attitudes concerning the verge of forbidden territory in another. This seemed the result of judicial legislation. It was in recognition of these problems that Justice Rehnquist in his dissent in *Committee for Public Education v. Nyquist* noted that "[w]ithin the limits permitted by the Constitution, these decisions are quite rightly hammered out on the legislative anvil."⁶³

Additional doctrines were developed by the Court that had the effect of further emasculating the theoretical underpinnings of *Allen*. The acceptance of dual and separable secular and religious roles in nonpublic education was replaced with a presumption that these are

61. *Walz v. Tax Comm'n*, 397 U.S. 664, 699-700 (1970) (Harlan, J., concurring).

62. *Id.* at 670.

63. 413 U.S. 756, 813 (1973).

"religious-pervasive institutions,"⁶⁴ and that aid to the secular functions of the schools cannot be separated from the religious functions. Justice Stewart, writing for the majority in a later case, concluded:

[I]t would simply ignore reality to attempt to separate secular educational functions from the predominantly religious role performed by many of Pennsylvania's church-related elementary and secondary schools and to then characterize Act 195 as channeling aid to the secular without providing direct aid to the sectarian. Even though earmarked for secular purposes, "when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission," state aid has the impermissible primary effect of advancing religion.⁶⁵

V. DISSENTERS' REACTION TO THE HARSH IMPACT OF *Lemon* AND *Nyquist*

The dissenting opinion of Chief Justice Burger in *Nyquist* reveals that the entanglement test, which he set forth in *Walz* and expanded in *Lemon*, had in *Nyquist* gone much further than he had anticipated. It was being utilized to bar forms of assistance that he felt provided benefits to children rather than churches and thus met constitutional standards. The tolerant attitude expressed by Chief Justice Burger in his *Nyquist* dissent may very well be attributable to a reconsideration of the potential tensions between the establishment and free exercise clauses. While commenting upon the application of the two clauses the Chief Justice stressed free exercise principles: "[T]he balance between the policies of free exercise and establishment of religion tips in favor of the former when the legislation moves away from direct aid to religious institutions and takes on the character of general aid to individual families."⁶⁶ Chief Justice Burger also reflected a different reaction to "momentum blocking" when he noted that "[i]t is no more than simple equity to support partial relief to parents who support the public schools they do not use."⁶⁷

Justice White's dissent in *Nyquist* stated the free exercise argument even more forcibly:

Under state law these children have a right to a free public education and it would not appear unreasonable if the State, relieved of the expense of educating a child in the public school, contributed to the expense of his education elsewhere. The parents of such children pay taxes, including school taxes. They could receive in return a free education in the public schools. They prefer to send their children, as they have the right

64. *Committee for Pub. Educ. v. Nyquist*, 413 U.S. 756, 783 n.39 (1973).

65. *Meek v. Pittenger*, 421 U.S. 349, 365-66 (1975) (quoting *Hunt v. McNair*, 413 U.S. 734, 743 (1973)).

66. *Committee for Pub. Educ. v. Nyquist*, 413 U.S. 756, 802 (1973) (Burger, C.J., dissenting).

67. *Id.* at 803.

to do, to nonpublic schools that furnish the satisfactory equivalent of a public school education but also offer subjects or other assumed advantages not available in public schools. Constitutional considerations aside, it would be understandable if a State gave such parents a call on the public treasury up to the amount it would have cost the State to educate the child in public school, or, to put it another way, up to the amount the parents save the State by not sending their children to public school.

In light of the Free Exercise Clause of the First Amendment, this would seem particularly the case where the parent desires his child to attend a school that offers not only secular subjects but religious training as well. A State should put no unnecessary obstacles in the way of religious training for the young. "When the state encourages religious instruction . . . it follows the best of our traditions."⁶⁸

Justice Rehnquist's dissent in *Nyquist* reveals that he likewise would have upheld the tuition reimbursement and tax relief provisions of the New York statute in recognition of the "benevolent neutrality"⁶⁹ required in order to reconcile the tension between the free exercise and establishment clauses. His dissent recognized that financial restraints to free exercise exist when nonpublic school parents are compelled to pay for their own children's education as well as support public school services unused by them.

Notwithstanding the Chief Justice's shift in attitude and the strength of the Rehnquist and White dissents, an even more extreme and restrictive application of the tripartite test was made in the 1975 case *Meek v. Pittenger*.⁷⁰ *Meek* struck down a program that involved loaning equipment and providing health services to nonpublic schools. It was the culmination of the era of persistent Supreme Court disapproval of state aid to church-sponsored schools. Strangely, though, this disapproval did not extend to state aid to church-sponsored colleges. These cases, by their contrast, illuminate the hostility the Court's majority held toward religious education.

VI. APPROVAL OF STATE AID IN HIGHER EDUCATION CASES: A RELIGION-EFFECTIVENESS TEST?

If a lawyer in 1971, after reviewing the *Lemon* opinion, were called upon to opine as to the constitutionality of federal legislation providing grants for the construction of buildings at church-related colleges, the thrust of his opinion would be quite predictable. After reciting the tripartite test, the lawyer would advise that it would be necessary to establish comprehensive restrictions in order to insure that the legislation did not result in advancement of religion. Absent restrictions, the legislation would fail the primary effect test because of the danger that the

68. *Id.* at 814 (White, J., dissenting) (quoting *Zorach v. Clauson*, 343 U.S. 306, 313-14 (1952)).

69. *Id.* at 810 (Rehnquist, J., dissenting).

70. 421 U.S. 349 (1975). See notes 77-86 *infra* and accompanying text.

mandated aid could be applied to a sectarian purpose. On the other hand, if the legislation contained adequate restrictions it would fail because of excessive government entanglement with religion. At least this would be the likely content of the opinion if that lawyer had not read *Tilton v. Richardson*,⁷¹ which was announced the same day as *Lemon*. The tests and guiding principles read the same in *Tilton* as in *Lemon*, but the same tests apparently have different meanings when applied at different levels of education.

In sustaining the constitutionality of construction grants to church-related colleges, the Court was impressed by the fact that churches are less successful in the accomplishment of their religious missions in colleges than in elementary or secondary schools: "There is substance to the contention that college students are less impressionable and less susceptible to religious indoctrination."⁷² Although many of the church-state cases relating to elementary and secondary education are decided on the basis of an assumed composite profile of church-related schools, the court in *Tilton* rejected that approach: "We cannot . . . strike down an Act of Congress on the basis of a hypothetical 'profile.'"⁷³ A comparison of *Tilton* and *Lemon* simply confirms the ad hoc approach that has been used by the Court in this area of the law. The Court seems more skeptical of the possibility of religious inculcation in church-related colleges and thus more tolerant of aid programs to them.

After approving federally funded construction grants to church-related colleges in *Tilton*, the Supreme Court next approved a state program for construction of church-related colleges with state-issued, tax-exempt bonds in the case *Hunt v. McNair*.⁷⁴ In *Hunt* the state-created authority that issued the bonds would take title to the facility and lease it back to the college, with reconveyance to the college upon full repayment of the bonds. The *Hunt* decision was announced the same day as *Nyquist*. The same words were used in describing the tests but these words again were applied differently. The Court refused to adopt a composite profile of the religious nature of post-secondary institutions and differentiated the colleges from the church-related elementary schools on the basis of the differing religious character of the institutions.

Perhaps the most surprising of all of the recent higher education cases was *Roemer v. Board of Public Works*.⁷⁵ The Court upheld a Maryland statute that provided direct annual subsidies to church-re-

71. 403 U.S. 672 (1971).

72. *Id.* at 686.

73. *Id.* at 682.

74. 413 U.S. 734 (1973).

75. 426 U.S. 736 (1976).

lated colleges in an amount equal to fifteen percent of the state's expenditure for students in state colleges. The Court again stressed the secular functions of the religious colleges and the religious function of church-related elementary and secondary schools.

Although colleges undoubtedly seek to accomplish their religious goals differently from elementary and secondary schools, it is indeed doubtful that a religious organization would sponsor and administer a church-related college if it did not consider it to be part of its religious mission. It seems obvious that the extent to which a religious organization is able to inculcate religious values or religious doctrine in students attending its colleges varies from college to college. In a recent case a district court in Tennessee observed:

It should be noted here that the evidence adduced established that some, but not all, of the private schools [colleges] whose students benefited from this program are operated for religious purposes, with religious requirements for students and faculty and are admittedly permeated with the dogma of the sponsoring religious organization.⁷⁶

The Supreme Court has purportedly refused to use composite profiles in higher education cases, but the truth is that it has used standard profiles in evaluating the nonsecular nature of colleges, just as it did in cases concerning aid to elementary and secondary schools. It assumes as a general proposition that church-related colleges are not as effective in their religious goals as elementary and secondary schools. Coupled with the Court's assumption that elementary and secondary sectarian schools are "religious-pervasive institutions," this presents a question whether the Court is establishing a preferred religion based on the effectiveness of its mission to inculcate religious values during the education process.

The difficulty with such an analysis is that it acts as a restraint upon the free exercise of religion. Simply put, the test seems to be that an educational institution may receive a share of education tax dollars only if it is ineffective in its religious mission. The trouble with this approach is that it places the Court in the position of making value judgments as to the desirability and effectiveness of religious beliefs and religious missions. The Court found a rationale to justify its compromise, but it may again find that it has entered an extremely uncomfortable thicket. This sort of evaluation of the "religion-effectiveness" of the institutions involved does not represent the neutrality that the free exercise clause requires. When the Court approves direct state aid to a Catholic college but denies a cultural field trip bus ride to a child attending a Jewish grade school it is advancing one form of religious activity and impeding another. Does this approach not establish a

⁷⁶ *American United for Separation of Church and State v. Blanton*, 433 F. Supp. 97, 100 (M.D. Tenn. 1977), *aff'd mem.*, 98 S. Ct. 39 (1977).

Court-preferred method of teaching religion, and place financial obstacles in the way of religious training that does not comply with the Court's preference?

VII. STRANGLING ENTANGLEMENT—THE COURT'S SHIFT FROM STRICT DISAPPROVAL TO BALANCING

It must be recalled that for some time before *Wolman* no state aid to church-related elementary or secondary schools had been approved by the Court. The religion-effectiveness approach that apparently emerged in the higher education cases indicated a hostility of the Court towards effective religious education. The culmination of this period of strict disapproval of elementary and secondary aid came in the case *Meek v. Pittenger*.⁷⁷

In *Meek* the Court was presented with a state program that loaned textbooks and instructional equipment and materials to the schools and provided on-premises health and remedial service to the students. Justice Stewart authored an opinion in *Meek* that brought himself and his fellow swing Justices, Blackmun and Powell, together in a coalition with the three Justices who were then most opposed to state aid to parochial schools—Justices Douglas, Brennan, and Marshall. His effort to state principles that would be guiding or controlling in future litigation, however, proved to be disastrous, as it brought internal tensions within the Court to a high point. Chief Justice Burger's dissent contained a bitter and stinging rebuke, reflecting his conviction that the Court was ignoring the free exercise clause and discriminating against children because of the exercise of religious choice by their parents. He charged that the consequence of the Court's holding was to "penalize institutions with a religious affiliation," to "affirmatively stifle . . . religious activity," and to "penalize children . . . who have the misfortune to have to cope with the learning process under extraordinarily heavy physical and psychological burdens." According to the Chief Justice, the *Meek* ruling "literally turns the Religion Clauses on their heads."⁷⁸

Insofar as the legislative program in *Meek* provided auxiliary health and remedial services to nonpublic school children on the same basis as public school children, the free exercise implications of excluding the nonpublic school children were apparent. Should a child be denied an inherently secular diagnostic or remedial service simply because his parents had selected a church-related school? The Supreme Court had already held that "no State may exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of

⁷⁷ 421 U.S. 349 (1975).

⁷⁸ *Id.* at 386-87 (Burger, C. J., dissenting).

their faith, or lack of it, from receiving the benefits of public welfare legislation.'"⁷⁹ Nevertheless, Justice Stewart stressed the establishment rather than the free exercise clause when he concluded that the services would be provided "in schools in which education is an integral part of the dominant sectarian mission and in which an atmosphere dedicated to the advancement of religious belief is constantly maintained."⁸⁰ He found that the state would be required to engage in unconstitutional surveillance to insure that a speech and hearing therapist, hired and controlled by the local public school district, would not sneak religion into speech therapy. It was obviously in response to Chief Justice Burger's stinging rebuke that a footnote to Justice Stewart's opinion⁸¹ indicated that the Court did not challenge the right of the state to make free auxiliary services available to all students in the Commonwealth, including those who attended church-related schools. The footnote, however, failed to specify the constitutionally acceptable mechanism for providing such services to all children.

Meek reaffirmed *Allen* by upholding the constitutional validity of the textbook aid, but declared the supply of instructional material and equipment to be unconstitutional. The Court again justified this result on the basis of the "predominantly religious character of the schools benefiting from the Act."⁸² A question arises, however, with respect to this rationale because the Court recognized that the materials and equipment were "self-polic[ing], in that starting as secular, nonideological and neutral, they will not change in use."⁸³ The Court did not explain how a secular piece of equipment that could not be used for religious purposes would have the primary effect of advancing religion in a church-related school. Neither did it explain how the lending of a secular package of math cards advanced religion when a math textbook containing the same information did not. Justice Rehnquist in his dissent pointed out that "[o]nce it is conceded that no danger of diversion exists, it is difficult to articulate any principled basis upon which to distinguish the two Act 195 programs."⁸⁴ The extent to which the entanglement test as enunciated in *Waltz* had been expanded in *Meek* led Justice Rehnquist to observe: "[A]ppellees are left to wonder, with good reason, whether the possibility of meeting the entanglement test is now anything more than 'a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will.'"⁸⁵

79. *Sherbert v. Verner*, 374 U.S. 398, 410 (1963) (quoting *Everson v. Board of Educ.*, 330 U.S. 1, 16 (1947)).

80. *Meek v. Pittenger*, 421 U.S. 349, 371 (1975).

81. *Id.* at 368 n. 17.

82. *Id.* at 363.

83. *Id.* at 365.

84. *Id.* at 391 (Rehnquist, J., dissenting).

85. *Id.* at 374 (quoting *Edwards v. California*, 314 U.S. 160, 186 (1941)(Jackson, J., concurring)).

Justice Rehnquist also took the majority to task for "throwing its weight" on the side of those who believe that society as a whole should be secular rather than religious.

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe. Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.⁸⁶

Since *Meek* had stretched the entanglement test beyond the breaking point and aggravated the inherent tension between the free exercise and establishment clauses, it was inevitable that a case like *Wolman v. Walter*⁸⁷ would follow on its heels. The Ohio legislation before the Court in *Wolman* was drafted for the specific purpose of testing the limits of *Meek*. It was suggested in *Meek* that some of the services may have been constitutional but the Court refused to treat the legislation as being severable.⁸⁸ The Ohio legislature sought to avoid having the Court strike down its entire program by enacting twelve separate categories of aid, in separately labeled paragraphs,⁸⁹ specifically designated as independent and wholly severable.⁹⁰ The Supreme Court acceded to the wishes of the legislature and treated the various aid provisions as severable, sustaining nine sections while rejecting the constitutionality of three.

The *Wolman* Court dealt with the various types of aid in separately numbered portions of its opinion, and not all portions mustered the same majority of the Justices. State aid categories approved by the Court are (1) textbook loans to pupils,⁹¹ (2) standardized testing and

86. *Id.* at 395-96 (quoting *Zorach v. Clauson*, 343 U.S. 306, 313-14 (1952)).

87. 97 S. Ct. 2593 (1977).

88. *Meek v. Pittenger*, 421 U.S. 349, 371 n.21 (1975).

89. OHIO REV. CODE ANN. § 3317.06(A)-(L) (Page Supp. 1976).

90. *Id.* § 3317.06 (Page Supp. 1976) states: "Moneys paid . . . shall be used for the following independent and fully severable purposes . . ."

91. *Wolman v. Walter*, 97 S. Ct. 2593, 2599-600 (1977) (upheld by six Justices).

scoring,⁹² (3) diagnostic services—speech, hearing, and psychological testing—provided on premises by professional employees of the local boards of education,⁹³ and (4) therapeutic services—speech, hearing, and psychological therapy, and programs for emotionally disturbed and handicapped children—provided off-premises by professional employees of the board of education.⁹⁴

Programs whose constitutionality were rejected are (1) loans to pupils of instructional materials and equipment incapable of diversion to religious use⁹⁵ and (2) transportation for field trips that are the same as those provided in public schools.⁹⁶

The Ohio statute sought to test the abuse of free exercise concepts in *Meek* by calling for the remedial educational services, provided to public school pupils, to be provided to nonpublic school pupils either at a public school, a public center, mobile home or a similar neutral site. Services less susceptible to the inculcation of religious beliefs such as health and diagnostic services were to be provided in the nonpublic school. It was difficult for the Court to ignore the free exercise implications of a denial of these services under such circumstances. Would the Court label a nonpublic school pupil as a sectarian citizen even when he was led off the school premises? Would the sectarian badge stand as a barrier to the receipt of secular, neutral, and nonideological services even in public facilities?

The plaintiffs in *Wolman* argued that even when nonpublic school children were off school premises, they were "an identifiable sectarian group," and that aid could not be provided to such a sectarian class. Did such an argument mean that these children were identifiable sectarian children when they went to the movies, when they went to a grocery store, when they participated in dances with other children, or when they went to a public library? The Supreme Court had already rejected programs that provided identical services to church-related school children at their school. The free exercise clause of the first amendment would have become meaningless if the Court had held that children must be denied therapeutic and remedial services by public employees, under control of the local public school district, at public facilities simply because they are registered pupils at church-related schools. Although the Court again passed up the opportunity to speak directly to the tension between the establishment and free exercise clauses, it upheld the constitutional validity of providing educational and therapeutic services at neutral sites and the constitutional

92 *Id.* at 2600-01 (upheld by six Justices)

93 *Id.* at 2601-03 (upheld by eight Justices)

94 *Id.* at 2603-05 (upheld by seven Justices)

95 *Id.* at 2605-07 (invalidated by six Justices)

96 *Id.* at 2608-09 (invalidated by five Justices)

validity of providing health and diagnostic services at the church-related school.

The Court in *Wolman* did not base its decision on free exercise principles, but seemed to adopt Chief Justice Burger's child benefit approach in noting that "[t]he dangers perceived in *Meek* arose from the nature of the institution, not from the nature of the pupils."⁹⁷

VIII. REALIGNMENT OF THE JUSTICES: A MORE PERMISSIVE APPROACH TO NONPUBLIC SCHOOL AID

The *Wolman* decision was the first case since *Allen* in which the Court upheld meaningful assistance to children attending church-related elementary and secondary schools. Since the *Wolman* decision allowed \$88,800,000 per biennium to continue to flow under the Ohio plan, it dispelled the notion created by *Meek* that any attempt to provide substantial aid to nonpublic school children would be blocked.⁹⁸ Although the \$88,800,000 per biennium assistance is of extreme importance to children attending Ohio's nonpublic schools, the long-range implications of *Wolman* in the continuing development of first amendment principles relating to nonpublic school aid are of much greater import. For one thing, the *Wolman* decision suggests that Justice Powell is ready to join the Burger-Rehnquist-White voting block. Justice Powell's concurring opinion in *Wolman* reflects one of the most enlightened views expressed in this troublesome constitutional area.

Justice Powell noted that we have reached a point in the twentieth century far removed from the dangers that prompted the framers to include the establishment clause in the Bill of Rights. He argued that the risk of religious control over democratic processes or deep political divisiveness along religious lines was quite small when viewed against the contributions of the sectarian schools. The following extract from Justice Powell's concurring opinion indicates that *Wolman* does not present the final word, and that properly drafted legislation providing secular assistance to pupils rather than institutions may yet find a receptive court:

Our decisions in this troubling area draw lines that often must seem arbitrary. No doubt we could achieve greater analytical tidiness if we were to accept the broadest implications of the observation in *Meek v. Pittenger* . . . that "[s]ubstantial aid to the educational function of [sectarian] schools . . . necessarily results in aid to the sectarian enterprise as a whole." If we took that course, it would become impossible to sustain state aid of any kind—even if the aid is wholly secular in character and is supplied to the pupils rather than the institutions. *Meek*

97. *Id.* at 2605.

98. *Id.* at 2610 (Brennan, J., dissenting).

itself would have to be overruled, along with *Board of Education v. Allen*, . . . and even perhaps *Everson v. Board of Education* The persistent desire of a number of States to find proper means of helping sectarian education to survive would be doomed. This Court has not yet thought that such a harsh result is required by the Establishment Clause. Certainly few would consider it in the public interest.⁹⁹

Justice Powell would have approved field trip transportation under the Ohio program and also a more restricted program of lending instructional materials and equipment to the pupils. This places him very close conceptually to the position advanced by Chief Justice Burger since 1973. Justice Blackmun's opinion for the Court¹⁰⁰ in *Wolman* may also be interpreted as setting the stage for a new approach in the area. It approves programs calling for substantial assistance to elementary and secondary school children, differentiates between children and the religious school they attend, and places greatly reduced stress upon the political divisiveness doctrine.

Those who saw *Wolman* as opening the door to a new and more permissive approach to aid to nonpublic school programs found their view supported by the October 3, 1977 Supreme Court affirmance of *Americans United for the Separation of Church and State v. Blanton*.¹⁰¹ The legislation challenged in *Blanton* was a Tennessee program of assistance grants for pupils at public and church-related colleges. The three-judge district court sustained the Tennessee legislation on the basis of the child benefit theory promulgated in *Everson* and *Allen*, and on the basis of the "broad class of recipients" theory suggested in *Nyquist*.¹⁰² Thus, precedent was found in the elementary and secondary school cases. Although the three-judge district court in *Blanton* did not specifically address the internal tension between the establishment and free exercise clauses, it noted that the purpose of the Tennessee program was to "provide needy students with the opportunity to attend the higher education institution of their choice, be it public, private, sectarian, or nonsectarian."¹⁰³ It also relied to a substantial degree upon the Supreme Court's dismissal of an appeal from a South Carolina decision for want of a substantial federal question. The South Carolina Supreme Court had approved a loan program to students at public and nonpublic colleges.¹⁰⁴ It sustained the legislation on the grounds that it was "scrupulously neutral as between religion and religion and as between various religions."¹⁰⁵

99. *Id.* at 2613 (Powell, J., concurring) (citations omitted).

100. *Id.* at 2597-609.

101. 433 F. Supp. 97 (M.D. Tenn. 1977), *aff'd mem.*, 98 S. Ct. 39 (1977).

102. *Id.* at 102-03 (citing *Committee for Pub. Educ. v. Nyquist*, 413 U.S. 756 (1973)).

103. *Id.* at 105.

104. *Durham v. McLeod*, 259 S.C. 409, 192 S.E.2d 202 (1972), *appeal dismissed*, 413 U.S. 902 (1973).

105. *Id.* at 413.

Does the Court's affirmance of *Blanton* mean that legislative programs providing loans, grants, scholarships, vouchers or tax credits to pupils at nonpublic educational institutions will be sustained if (1) such benefits are provided to a broad base of recipients, (2) the grants are to the pupils or their parents and not to the institutions, and (3) the legislative program is scrupulously neutral with respect to religion? Does the fact that Justices Marshall, Brennan, and Stevens would have noted probable jurisdiction in *Blanton* lend support to the theory that Justices Powell, Stewart, and Blackmun are leaning more in the direction of the Burger-Rehnquist-White bloc than in the direction of the Brennan-Marshall-Stevens bloc? The answer to these questions is not yet clear.

IX. CONCLUSION

Although the United States Supreme Court has now considered constitutional challenges to almost every conceivable form of legislation providing assistance to nonpublic school pupils, it does not appear that the final page has been written. The inherent tension between the free exercise and establishment clauses remains. The slate is "anything but clean" with respect to the criteria to be applied in future cases, but the criteria leave substantial room for "play in the joints" and new developments can be anticipated.

Public school financing is in a state of upheaval. Federal court remedies ordered in racial desegregation cases have caused short-range chaos. Some local school districts are uncertain whether to look to the local property tax, state funding, or the federal courts for resolution of their financial problems. School districts throughout the country are embroiled in litigation challenging the constitutionality of their formulae for public school financing. Public schools and nonpublic schools in some states have joined hands to search for common solutions.

Such joint efforts will undoubtedly look to decisions like *Wolman* for guidance. Public schools may want to move in the direction of per-pupil funding. Nonpublic schools would be well advised to concentrate upon child benefit assistance and upon legislation directed toward a broad class of beneficiaries. Thus, joint solutions for financial problems confronting public and nonpublic schools may lie ahead. Although these educational, financial, and constitutional problems are indeed perplexing, thoughtful scholarship directed toward the internal tensions in the first amendment between the establishment and free exercise clauses may bring a firmly rooted solution.

STATE OF ALASKA
THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 24, 1979

SUBJECT: Tuition Tax Credit
(Work Order #5843)

TO: Representative Terry Martin

FROM: Kenneth E. Vassar, Legislative Counsel *KEV*

Enclosed is the bill you requested allowing taxpayers to take a credit against their state income tax for amounts paid for tuition costs at private schools. As I discussed with you earlier, I believe this is in violation of Article VII, sec. 1, Constitution of the State of Alaska. That section provides in part:

No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

It may be questioned whether the allowance of a tax credit is the same as a payment from public funds. Most courts which have faced the issue have found that tax exemptions do constitute such a payment. In considering Article IV, sec. 31, of the California state constitution, which prohibits the appropriation of public money except for a public purpose, the California Supreme Court has held that their constitution prohibits any plan by which the credit of the state is given or loaned, regardless of the form which the transaction takes. Veterans Welfare Board v. Jordan, 208 P. 284 (1922). Another California case found the cancellation of taxes to be a "thing of value" which came within Article IV, sec. 31; so far as procedure was concerned, the act of cancellation was the making of a gift. Ojai v. Chaffee, 140 P.2d 116 (1943). Finally, in Committee for Public Education v. Nyquist, 413 U.S. 756 (1973), the United States Supreme Court discussed New York's programs of tuition grants and tax relief for parents of children attending elementary and secondary nonpublic schools. At 413 U.S. 756, 791, the court stated:

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We see no answer to Judge Hays' dissenting statement below that '[i]n both instances [tuition grants and tax relief] the money involved represents a charge made upon the state for the purpose of religious education.'

In view of these cases, it seems certain that a tax credit is a payment of public funds. The next question under Article VII, sec. 1, is whether the credit would constitute a "direct" benefit to the private schools.

The delegates to Alaska's constitutional convention debated whether to use the phrase "direct or indirect benefit" rather than "direct benefit." The report of the Health, Education and Welfare committee to the convention would indicate that "indirect" benefits were meant to be limited to basic health and welfare benefits, provided to children attending the private schools. In its report, the committee stated:

We feel that the words 'or indirect' would reach out into infinity practically....We did feel it would shut out certain things that should not be prohibited. For instance, the welfare department was giving free care to the children of the community and it might be administered through the schools. We feared that 'indirect' would make it impossible to give any of these welfare benefits, for instance to children who were in private schools, and we do not feel that any prohibition should go that far. Alaska Constitutional Convention Proceedings, p.1517.

The decision of the Alaska Supreme Court in Matthews v. Quinton, 362 P.2d 932 (1961), reflects the broad interpretation of "direct" and narrow interpretation of "indirect" implied by the passage above from the constitutional convention. In Matthews, the court found that the expenditure of public funds to provide transportation for students at private elementary and secondary schools constituted a direct benefit to the schools. An interpretation of "direct benefit" consistent with Matthews and the report of the Health, Education and Welfare committee of the convention, would seem to require classifying a tax credit plan which is tied to tuition payments at private schools as a direct benefit to the schools.

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Beyond any problem with Alaska's constitution, this bill also suffers from severe federal constitutional problems. The First Amendment to the United States Constitution prohibits laws "respecting an establishment of religion." In Nyquist, supra, the United States Supreme Court stated:

A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of "neutrality" toward religion....Special tax benefits, however, cannot be squared with the principle of neutrality established by the decisions of this Court. To the contrary, insofar as such benefits render assistance to parents who send their children to sectarian schools, their purpose and inevitable effect are to aid and advance those religious institutions. 413 U.S. at 793.

In summary, it is quite likely that this bill would be found unconstitutional, whether decided under the state or federal constitution.

KEV:nem

Enclosure